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OCTOBER TERM, 1898.

No. 109.

**EDWIN A. MCINTIRE AND MARTHA MCINTIRE,
APPELLANTS,**

vs.

MARY PRYOR, APPELLEE.

**APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.**

BRIEF FOR APPELLEE.

FRANKLIN H. MACKAY,
For Appellee.

IN THE
Supreme Court of the United States.

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BRIEF FOR APPELLEE.

This case was in its inception one of *five* cases brought by bill in equity in the supreme court of the District of Columbia against the appellants above named as joint defendants in each case except one (Hayne's), in which last named case Edwin A. McIntire was the sole defendant.

The five cases were entitled as follows:

Mary Pryor *vs.* Edwin A. McIntire and Martha McIntire.

Elizabeth Brown *vs.* Same.

Annie Ackerman *vs.* Same.

John Southey *vs.* Same.

Joseph Hayne *et ux. vs.* E. A. McIntire.

These cases were brought by the respective complainants to procure decrees declaring fraudulent and void certain deeds of real estate spread upon the land records of the District of Columbia, an accounting, etc.

In each of the cases fraud of the most flagrant character was charged, the details of which are, of course, different with each case, except in two important and indeed vital particulars, which were common to all, namely, it was charged :

First. That the defendant E. A. McIntire, being a trustee for the complainants and having the legal title to their property vested in him, falsely and fraudulently pretended, for the purpose of cheating the complainants and of gain to himself, that he had sold their respective properties to one "Emma Taylor." These alleged sales, the complainants averred, they had only recently discovered to have been entirely pretended and fictitious, and they averred that he had used this pretense during a number of years as a cloak to cover up his fraudulent appropriation during all that time of the rents and profits of the various properties.

Secondly. That, for the purpose of still further covering up these fraudulent dealings, he falsely and fraudulently pretends that this alleged "Emma Taylor" subsequently and at various dates sold and conveyed the respective properties, except the Hayne property, to the defendant Martha McIntire (one of his sisters), who falsely and fraudulently claimed to be the owner thereof.

In substance these two charges constitute the gravamen of the five bills except, as we have said, in the case of Hayne. In that case the property had passed into the hands of an innocent purchaser for value, so that only an accounting was sought from the defendant, who it was alleged received and appropriated to his own use the purchase-money.

Referring especially now to the charge in respect of the alleged "Emma Taylor," the complainants contended that they had proved her to be an imaginary person created by the defendant E. A. McIntire in furtherance of his fraudulent purpose to convert these properties to his own use. They contended that the alleged deeds purporting to have been executed by her were proved to be forgeries, the name "Emma Taylor" having been written at E. A. McIntire's suggestion and request by Emma Taylor McIntire, another of the sisters and employed at the time as a clerk in his office. The complainants further contended that the consideration mentioned in all of the five deeds from "Emma Taylor" to Martha McIntire was fictitious and fraudulent; that no money was paid by Martha McIntire to any one for these alleged conveyances to her, and that therefore, even if she did not know of the fictitious character of the grantor, she was not a *bona fide* purchaser for value, and this aside from the fact that she was charged with the knowledge *actually* possessed by her admitted agent, E. A. McIntire, and also aside from the fact that a deed having the name of a fictitious person as grantor would in no event pass a title.

On the other hand, these charges were all denied by the McIntires. They answered that the alleged deeds in which "Emma Taylor" figured as grantee in some and grantor in others were actual and *bona fide*, and that the considerations respectively set forth in them were actually paid; that "Emma Taylor" was a genuine flesh and blood being; that they had seen her, dealt with her, &c., and that no decep-

tion or fraud of any kind was practiced by any of the defendants.

The issues thus raised were, as we have said, common to all of the five cases, although, of course, there were other features in some of them.

For the purpose of saving the expense of repeating the testimony in each case relating to the charges that "Emma Taylor" was a fictitious person and the various charges of fraud against the defendants, Edwin A. McIntire and Martha McIntire, it was stipulated that the testimony taken in each case, so far as relevant, might be read and considered by the court as having been taken in each of the other cases. The following is a copy of the stipulation, which will be found in the record at the close of each of the cases, they being all alike. That in the Pryor case will be found on page 423 of the Record :

" It is mutually stipulated by and between the respective parties to this cause, by their respective solicitors, that the testimony and exhibits offered and filed in each of these cases, to wit, Pryor *vs.* McIntire, equity, No. 12761 ; Brown *vs.* McIntire, equity, No. 12977 ; Ackerman *vs.* McIntire, equity, No. 12978 ; Southey *vs.* McIntire, equity, No. 13034, and Hayne *vs.* McIntire, equity, No. 13177, in the supreme court of the District of Columbia, so far as the same may be relevant to the issues raised in this case of Pryor *vs.* McIntire (equity, No. 12761) in respect of Emma Taylor, Martha McIntire, or Edwin A. McIntire, *may be referred to and read at the hearing hereof with the same force and effect as if duly taken herein, subject to all and any objections as to the materiality and competency thereof which could have been made if the same had been taken therein.*"

The Court of Appeals therefore considered *all* of the testimony in *all* of the cases relating to the question of the fictitious character of "Emma Taylor" and of the financial ability of Martha McIntire, and while not finding it necessary to announce its conclusion as to Martha McIntire's finances, did find, as matter of fact, from a consideration of

all of said testimony, that "Emma Taylor" was a fictitious person, as charged by the complainants, and that Martha McIntire was a party to her brother's frauds. Upon those charges—i. e., the fictitiousness of "Emma Taylor" and the *mala fides* of Martha McIntire—the case now at *this* bar (Mary Pryor's case) was founded, as in fact were all the other cases. The Court of Appeals thereupon passed its decree in each of the cases (except Southey's, dismissed on the ground of laches) granting the relief prayed.

The amounts involved in the other cases were not sufficient to give this court jurisdiction on appeal, and consequently only the Pryor case has been brought here; but with it has been brought all the testimony in each of the other cases, for the reason that the court below having heard and decided the Pryor case (as well as the others) upon the testimony in *all* of the cases, it is necessary that this court, as a reviewing court, should have before it all the testimony upon which the court below made up its judgment before it will undertake to disturb that judgment.

Another important and unanswerable reason why the testimony in each of the cases should be considered by this court before undertaking to disturb the decree of the court below is the *stipulation* of the appellants, whereby much important testimony, which might and could have been taken in the Pryor case, was dispensed with by the complainant, she resting (under the stipulation) upon the testimony in the other cases as sufficient, with that taken by her in her own case, to establish the principal charges of her bill.

THE VARIOUS FRAUDS THROW LIGHT UPON EACH OTHER.

One of the propositions of law relied upon by the appellee in this case is that—

EVIDENCE OF FRAUD OF LIKE CHARACTER COMMITTED BY THE SAME PARTIES AT OR NEAR THE SAME TIME IS ADMISSIBLE TO PROVE THE FRAUD COMPLAINED OF.

This evidence of frauds of like character to that committed in the Pryor case appears largely in the testimony in the other cases, and as the entire case of the appellee is based upon a charge of fraud in respect of certain deeds of her property, in which deeds or some of them the *same* parties fraudulently conveyed other and similar properties in a similar manner at the same time, she contends, therefore, that the frauds in respect of these other transactions tend to throw light upon her own case when the *motive* of the defendants is in question. That is the doctrine laid down by this court in two leading cases—

“Where fraud in the purchase or sale of property is in issue evidence of *other fraud of like character* committed by the same parties *at or near the same time* is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in time the inference is reasonable that they proceed from the same motive.”

Lincoln vs. Clafin, 7 Wall., 138.

And so Mr. Bigelow (Fraud, p. 161, vol. 1) says, citing numerous authorities, that—

“In order to prove fraud in a conveyance, evidence that the debtor and grantor made other conveyances of a collusive character is proper.”

For fraud, he says, is seldom proved by *direct*, but almost always by *circumstantial*, evidence.

In the case at bar it will be observed that the Brown,

Ackerman, and Eller properties were conveyed to Martha McIntire at the *same time* and by the *same deed*, and the Southey and Pryor properties by the *same deed*, and that E. A. McIntire, Martha McIntire, and "Emma Taylor" are the *same parties* in all these conveyances, thus bringing them completely within the doctrine laid down by the Supreme Court.

So, too, in the case of *Castle vs. Bullard*, 23 How., p. 186, the Supreme Court says :

"Decided cases have established the doctrine that *cases of fraud like the present are among the well-recognized exceptions to the general rule that other wrongful acts of the defendant are not admissible in evidence on the trial of the particular charge immediately involved in the issue. Similar fraudulent acts are admissible in cases of this description, if committed at or about the same time, and when the same motive may reasonably be supposed to exist, with a view to establish the intent of the defendant in respect to the matters charged against him in the declaration.*" "Some of the decided cases go farther, and hold that such evidence is *admissible, as affording a ground of presumption to prove the main charge; but whether so or not, it is clearly competent as tending to show the intent of the actor in respect to the matters immediately involved in the issue on trial.*"

CIRCUMSTANTIAL EVIDENCE ALWAYS RELEVANT UPON THE QUESTION OF FRAUD.

Again, as some of the evidence offered is objected to on the ground of irrelevancy, it may be well to quote from the same case of *Castle vs. Bullard* :

"Much of the evidence was of a circumstantial character, and it is not going too far to say that some of the circumstances adduced, if taken separately, might well have been excluded. Actions of this description, however, where fraud is of the essence of the charge, *necessarily give rise to a wide range of investigation*, for the reason that the *intent* of the defendant is, more or less, *involved in the issue*. Experience shows that positive proof of fraudulent acts is not generally

to be expected, and for that reason, among others, the law allows a resort to circumstances as a means of ascertaining the truth."

"Whenever the necessity arises for a resort to circumstantial evidence, *either from the nature of the inquiry or the failure of direct proof, objections to testimony on the ground of irrelevancy are not favored* for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof."

Castle vs. Bullard, 23 How., pp. 186, 187.

And so Mr. Bump (Fraud. Convey., 691), speaking of the character of circumstantial proof admissible to establish the fraud, says:

"It usually consists of many items of evidence which, standing detached and alone, would be immaterial, but which in connection with others tend to illustrate and shed light upon the character of the transaction and show the position in which the parties stand and their motives, conduct, and relations to each other. *Quæ singula non prosunt, juncta juvant.* Although the evidence is generally circumstantial, it is quite as potent as direct testimony. Sometimes a combination of circumstances characterizes a transaction so plainly and so clearly as to stamp upon it unerring and indelible marks of fraud which cannot be mistaken, and the transaction itself presents phases so remarkable and peculiar that no fair-minded person can hesitate to pronounce it fraudulent. These *indicia* are often the clearest proof and quite as reliable as positive evidence."

The Court of Appeals of the District of Columbia having therefore, as it states in its opinion (Rec., 526), considered so much of the testimony in all of these cases as was relevant and common to all of them, arrived at the conclusion, among other things:

1st. That "there is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. *She is an invention of Edwin A. McIntire*" (Rec., 528).

2d. In respect of the credit to be given the testimony of E. A. McIntire and his two sisters, Martha McIntire and Emma T. McIntire, in view of their plainly proved perjuries and impersonations of Emma Taylor, the court said:

"Our conclusions with regard to the evidence of these persons are such that we cannot accept their statements as sufficient to overcome the evidence of a single unimpeached witness, who, besides, has no pecuniary interest in the case, whatever may be the ill-feeling between her and them. Moreover, a certain unquestioned and unexplainable fact, which was under the circumstances relevant testimony, shows that the said brother and sisters were capable of such personation and fraudulent imposition upon an officer authorized to authenticate instruments. They had another sister, Sarah I. McIntire, who died in Philadelphia, January 10, 1881, leaving a deposit of \$1,196.60 in the Philadelphia Savings Fund Society. Martha McIntire drew this money upon the presentation of a power of attorney purporting to have been executed on May 2, 1881, by said Sarah I. McIntire and acknowledged on the same day before a notary public in the city of Washington. The blank spaces of this instrument were filled out by E. A. McIntire, and he subscribed the same as a witness" (Rec., 528).

3d. In regard to the *bona fides* of Martha McIntire, the defendant who claims the Pryor property as an innocent purchaser, the court found that—

"Martha McIntire is not an innocent purchaser of the property in controversy in this (the Pryor case) or in any of the cases. She and her sister Emma T. McIntire have, under the influence of their brother Edwin, co-operated with him in his schemes to defraud this and the other complainants" (Rec., 529).

This is a terrible indictment, it must be admitted, of the defendants in the case at bar; and we may feel assured it would not have been found by the Court of Appeals but upon a full and careful consideration of *all* the evidence, and we feel sure that this court will not reverse that finding but upon a like consideration.

It becomes, therefore, the duty of counsel to carefully present an analysis of the evidence upon which these defendants have been convicted of forgeries—*forgeries and frauds unparalleled, we believe, by any case ever before presented to this court.*

FALSUS IN UNO, FALSUS IN OMNIBUS.

The case of Mary Pryor, like all the other cases, is founded upon the principal charge that one "Emma Taylor," whose name was used to defraud the complainant, is a fictitious personage. If it be true that she is such, then there can be no doubt that the relief prayed in the bill must be granted, since, with the establishment of that fact, there is no credible testimony in the case to impeach the *prima facie* case made out by the complainant and her witnesses. The appellants, Edwin A. McIntire, Martha McIntire, and their sister Emma T. McIntire, are the only witnesses who undertake to contradict Mary Pryor and her witnesses in the material matters charged, and as they have sworn repeatedly and positively to the genuineness of "Emma Taylor"—that they saw her, conversed with her, and dealt with her—they have necessarily committed the boldest perjury in so testifying, if it be true that she is, as the Court of Appeals found, "a fictitious personage," "an invention of Edwin A. McIntire." The maxim *falsus in uno, falsus in omnibus* applies directly to such testimony, as has been declared by this court in *The Santissima Trinidad*, 7 Wheat., 338. It is important that we shall dwell a moment upon this proposition of the law of evidence, for the case of Mary Pryor should not be turned

out of court upon the testimony of perjured witnesses if she has otherwise proved her case. In *The Santissima Trinidad*, Mr. Justice Story, speaking for the court, said :

"If the circumstances respecting which the testimony is discordant be immaterial and of such a nature that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind rather than from deliberate error ; but when the party speaks of a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth or his being in a vessel on a particular voyage or living in a particular place, if the fact turn out otherwise it is extremely difficult to exempt him from the charge of deliberate falsehood, and courts of justice under such circumstances are bound, upon principles of law and morality and justice, to apply the maxim *falsus in uno, falsus in omnibus*. What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood ?"

The Santissima Trinidad, Story, J., 7 Wheat., 338.

So Mr. Starkie in his work on Evidence, p. 873, says :

"As the credit due to a witness is founded in the first instance on general experience of human veracity, it follows that a witness who gives false testimony as to one particular cannot be credited as to any, according to the legal maxim *falsus in uno, falsus in omnibus*. The presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury. *Faith in a witness' testimony cannot be partial or fractional*. Where any material fact rests on his testimony the degree of credit due to him must be ascertained, and according to the result, his testimony is to be credited or rejected."

"It is scarcely necessary to observe," he adds, "that this principle does not extend to the total rejection of a witness whose misrepresentation has resulted from mistake or infirmity and not from design, but, though his honesty remains unimpeached, this is a consideration which necessarily affects his character for accuracy."

And so in *Stoffer vs. State*, 15 Ohio State, 47, the court upon this subject say :

"The temptations and opportunities for deception in judicial inquiries are far greater than in the ordinary transactions of life. The tribunal must act promptly and decisively upon all the great interests which men hold valuable, and neither the right of individuals nor moral effect of their determinations can fail to suffer when they proceed upon evidence which is quite as liable to be deceptive as otherwise, and their findings as likely to be founded in error as in truth."

The rule thus laid down by the authorities is an eminently just and proper one. The integrity of judicial decisions over controversies of fact rests upon the confidence which judges place in the oral testimony of the witnesses. Without such confidence no judge can feel that he is dealing out that justice which he is called upon to administer. If he find that a particular witness has knowingly testified falsely about one material matter, how is he to know that the same witness is not also testifying falsely about other material matters? Shall a case be made to turn upon the testimony of a witness or witnesses who cannot be relied upon? Surely not. Therefore if the court find "*Emma Taylor*" to be a fiction, an invention of the defendant for fraudulent purposes, the testimony of the three McIntires must be wiped out of this case as with a sponge, and when that is done there is no material testimony but that of the appellee and her witnesses, and their credibility is not impeached.

PRELIMINARY QUESTIONS TO BE DISPOSED OF.

If the court has followed us thus far in this brief it will see that owing to the exceptional condition of the record (it being made up of the record in *five* cases when really there is but *one* of these cases over which it has jurisdiction) it will

serve the purpose of clearness to dispose of certain preliminary and important questions of fact which require an examination of evidence scattered through the *entire* record before attempting to examine the special features of the main case. This is so, because if the contention of the complainant is not sustained as to these preliminary issues it will hardly be worth while to dwell upon any others, for upon them is founded the complainant's (appellee's) case. These issues are :

1st. Is the alleged person, "Emma Taylor," who figures as the grantor and grantee in the principal deeds in the Pryor case, a fictitious person?

2d. Is Martha McIntire a *bona fide* purchaser for value?

3d. Are the McIntires such credible witnesses that the court can rely upon their testimony when they undertake to contradict the testimony of Mary Pryor and her witnesses?

These questions cannot, as we have said, be determined against the appellee, Mary Pryor, by an examination of the evidence in her case alone, for under the stipulations of the parties it was agreed that the evidence in all the *other* cases, so far as it was relevant to her case, need not be taken a second time, but might be considered as having been taken in her case and might be referred to and read upon the hearing.

To establish, then, the affirmative of the three issues above stated is the object of this preliminary brief. We first proceed to the "Emma Taylor" fiction.

"EMMA TAYLOR" A FICTION.

As was said by the Court of Appeals, "there is no such personage as Emma Taylor—she is an invention of Edwin A. McIntire." If there were no other evidence than that of the alleged "Emma Taylor" signatures to the five deeds in which she purports to be the grantor, these of themselves would establish the charge of the complainant. These original deeds have been brought here for the inspection of the court. Besides this, we have as part of the record photographs and photo-lithographs of these signatures. We submit them with confidence to the court as proof self-evident of the alleged forgeries. The "Emma Taylor" signatures are what the experts call "manufactured" or "built up" signatures. A comparison of them with the genuine signatures of Emma T. McIntire easily shows that they were written by her. In the first signature she did not attempt to disguise her hand at all, and the similarity in the form of the letters with those of her own name is too striking to be explained away. Afterwards, when she attempts to write the same name, she with each effort makes a different disguise of her true handwriting and "manufactures" an *Emma Taylor* signature, each of which is so unlike as to preclude the idea that it is genuine. She, however, betrays herself in the peculiar way in which she makes her *T* and the *m* and *n* of the forged signature. Each attempt to disguise her hand was done without having the previous signature before her in order to "copy" or "trace" it. Each, except the first, is a new and distinct attempt to make the signature as much unlike her own as possible. As a result, they are each, as we have said, too unlike all the others to be honest, and yet the betraying *T* and *m* and *n* can be found in each. A fact, too, amounting almost to a confession on the part of Emma T. McIntire that she wrote these signatures appears in evidence. After the strong similarity of the *T* in Taylor

to the T made by her in the middle initial of her name had been pointed out by the experts, when she came to sign her testimony *she changed the entire manner of making that initial* in a lame effort to mislead the court. The signature to her testimony has been photographed and is now before the court to verify this statement.

The experts in handwriting, Mr. Wm. F. McLellan and Mr. E. B. Hay, the first for over forty years chief of the warrant division of the Treasury Department and the recognized expert of that department of the Government in all matters of doubtful handwriting, have both of them testified, after an examination of these signatures and a comparison of them with the signature of Emma T. McIntire, that they were written by her, and the Court of Appeals also found such to be the fact. Besides the forgeries of these signatures there are numerous other forgeries of signatures and writings and spoliations of papers in these cases which have been detected and pointed out by the experts in the most convincing manner, but the limits of this brief will not permit us to dwell upon each, or, indeed, much of them. Mr. Justice Shepard, delivering the opinion of the Court of Appeals in these ~~five~~ cases, points out some of them. It was these forgeries and spoliation of papers which weighed as much, if not more, than anything else in bringing that court to its conclusions. Unfortunately, we are handicapped in this court by the fact that your honors necessarily cannot go into a close examination of the various frauds and forgeries special to each of the other cases, and yet the judicial examination of those special facts, all of them relevant to the case now at bar, had, as it undoubtedly should have had, its *cumulative* effect upon the minds of the learned justices in making up their judgments. We submit, therefore, that the conclusions of the Court of Appeals upon all the questions of fraud which arise in the Pryor case, and especially as to the fictitiousness of "Emma Taylor," should have great weight with this court. They have had better opportuni-

ties to judge of the fraudulent *motive* of the defendants by reason of their being called upon to judicially examine in detail each and all of the five cases, while your honors, on the other hand, can only from necessity look into them cursorily, except, of course, the case at bar.

THE CIRCUMSTANTIAL EVIDENCE.

Passing now from the matter of the forgeries, as we find them in this and the other cases, we come now to the consideration of the circumstantial facts pointing to the certain conclusion that the alleged "Emma Taylor" has no existence except as a fraudulent creation of the McIntires.

Though E. A. McIntire claims to have had not less than *nineteen* real-estate transactions with "Emma Taylor," either directly or through him as the agent of one or the other of the parties, during a period of less than three years and a half, viz., from April 12, 1881, to September 6, 1884, in all of which an aggregate of thousands of dollars was involved, yet he has signally failed to produce the slightest scrap of paper, relevant or irrelevant, having any connection with her or upon which her name or handwriting appears, and he admits he is unable to do so, so that but for the five deeds, two of which we produced ourselves, there would be nothing to show that this alleged "Emma Taylor" could even write.

Here is a list of her *alleged* real-estate transactions admitted by E. A. McIntire to have been made through him as agent of the parties and in evidence in the record:

"1881, April 1, E. A. McIntire to Emma Taylor, foreclosure deed of Brown property; consideration, \$500 (Ex. A. H. No. 42; Rec., 514).

"1881, April 25, Emma Taylor and Barbara Brown, deed to Martha McIntire, joint deed of Brown property; consideration, \$600 (Ex. A. H. No. 1; Rec., 707).

"1881, June 29, trust deed from Jenison to McIntire to secure Emma Taylor; \$425 (Ex. A. H. No. 26; Rec., 447).

Emma T. McIntire 1

Emma T. McIntire. 2

Emma T. McIntire 3

Emma T. McIntire, 4

Emma T. McIntire 5

Emma T. McIntire. 6

Wm. Helmick Seal 7
Justice of the Peace

Wm. Helmick Seal 8
Justice of the Peace

No. 1.-Admitted signature to paper filed Nov. 27, 1885, in the Probate Court, estate of Ada McIntire.

No. 2.-Admitted signature to paper filed Dec. 17, 1885, in Probate Court, estate of Ada McIntire.

No. 3.-Admitted signature Emma T. McIntire as witness to the Medford & Waldron contract. Exhibit A. H., No.

18, Pryor's case.

Nos. 4, 5 and 6, are the admitted signatures to the testimony of Emma T. McIntire in the Pryor, Hayne and Brown cases respectively, showing intentional change in the formation of the initial letter T after attention had been called by the experts to the remarkable similitarity between the T's in Nos. 1, 2 and 3, and the T in the "Taylor" signatures.

Nos. 7 and 8, are signatures, admitted to be genuine, of Wm. H. Helmick to the acknowledgments of the "Emma Taylor" deeds.



"1881, Sept. 6, deed, Emma Taylor to Martha McIntire, conveying Brown, Eller, and Ackerman properties (Ex. A. H. No. 2; Rec., 709).

"1882, January 11, Margaret Eller to Emma Taylor. Deed conveys Eller property; actual consideration, \$500 (Ex. A. H. No. 29; Rec., 451).

"1882, January 12, Swartzell to Emma Taylor, deed of Southey property; consideration, \$2,000 (Ex. A. H. No. 43; Rec., 457).

"1882, April 19, Jenison to Emma Taylor, deed of Pryor property; consideration, \$425 (Ex. A. H. No. 25; Rec., 445).

"1882, April 24, Ackerman to Emma Taylor, deed of Ackerman property; consideration, \$300 (Ex. A. H. No. 7; Rec., 811).

"1882, May 6, Willis Herndon to Emma Taylor, deed of Herndon property; about \$1,000 (Ex. A. H. No. 46; Rec., 459).

"1882, June 10, release by E. A. McIntire to Emma Taylor of Herndon property; consideration, nominal (Ex. A. H. No. 47; Rec., 459).

"1882, August 28, E. A. McIntire to Emma Taylor, deed of Hayne property; consideration, \$500 (Ex. A. H. No. 49; Rec., 460).

"1882, December 2, Wm. E. McIntire to Emma Taylor, deed of Wm. E. McIntire property; consideration, \$200 (Rec., 103).

"1882, December 30, Emma Taylor to Joseph Forrest, deed of Herndon property; consideration, \$900 (Ex. A. H. No. 14; Rec., 512).

"1883, May 14, Emma Taylor to Alfred Brown, deed of Hayne property; consideration, \$1,100 (Ex. A. H. No. 12; Rec., 434).

"1883, May 31, Emma Taylor to Lettie F. McIntire, deed of Wm. E. McIntire's property (Rec., 103).

"1884, May 31, Emma Taylor to Martha McIntire, deed of Pryor and Southey properties, two pieces; consideration, \$2,500 (Ex. A. H. No. 14; Rec., 436).

"1884, September 6, Emma Taylor to Martha McIntire, deed, three properties, \$1,800 (Ackerman, Eller and Brown)" (Ex. A. H. No. 2; Rec., 709).

In addition to these nineteen transactions, it must be remembered that there were numerous others, for if E. A. Mc-

McIntire is telling the truth when he says that "Emma Taylor" was the *real* owner of these properties for periods of from three months to three years, then, since we have shown that during these periods he collected the rents, paid the taxes, made repairs, etc., it must all have been done on her account.* Moreover, Alfred Brown (Rec., 941) swears he paid him twelve promissory notes of \$75 each, running over a period of 36 months, making the last payment in December, 1886, all of which were payable to Emma Taylor, and which he therefore must have collected for her.

Nor is he able to produce a single person who ever saw her during the time the conveyances bearing her name were made. He produces four witnesses who claim that they saw a woman *they were told by McIntire* was named Emma Taylor, but the *time* when they say they saw her was from one to two years *before* the first of these conveyances was made to her, viz., April 1, 1881. He produces not a single witness who saw her *after* that date. Let us examine the testimony of these witnesses briefly :

Elmer E. Atkinson (Rec., 154) says he saw a woman a number of times in McIntire's office about 1879 or 1880, at which time, in May or June of 1880, he left the city of Washington and did not return for seven or eight years afterwards; *understood her name* was Emma Taylor.

* Though McIntire strenuously denied that he ever had anything to do with these properties during the time when he says Emma Taylor owned them, and denied that he had any bills for taxes, repairs, etc., during that period, and therefore had no correspondence or receipts from her about them, yet the court will not fail to observe that after the court below had decided *against* him and directed an accounting before the auditor, he *there*, in order to lessen the amount of the finding against him, produced bills for taxes and repairs which he *there* claimed he paid at the *very time* when he says Emma Taylor owned the properties, notwithstanding he had sworn in the main case that he had never paid any such bills.

Annie M. Ackerman

The above is an enlarged photo-lithograph copy of the forged signature of Annie Ackerman to the deed of Sept. 6, 1884. (Ex. A. H. No. 7, Rec. 811.) Those below are like copies of her genuine signature.

A. M. Ackerman

very respectfully
A. M. Ackerman

Emma Taylor

Enlarged photo-lithograph of the forged "Emma Taylor" signature to the deed of April 25, 1881 (Ex. A. H. No. 11). Observe the partially erased attempt to spell the name at first Taylor.

NOTE.—April 1, 1881, was the first deed made by McIntire to Emma Taylor, and April 28, 1881, the first deed purporting to be signed by her; so it will be seen that this witness had left Washington nearly a year before *our* "Emma Taylor" came upon the scene.

Charles F. Shafer (Rec., 152) used to go into McIntire's office every day to look at the *Real Estate Record* and to "pick up" business, and saw a lady frequently come in the office. "I was not introduced to her, but I was informed that she was Emma Taylor."

"Q. Do you know what her business was there?"

"A. Well, she would talk about *buying* real estate.

"Q. With whom did she talk?"

"A. With Mr. Edwin A. McIntire."

Cross-examined:

"Q. You saw her frequently there in 1879?"

"A. Yes.

"Q. Did you ever see her there after 1879?"

"A. No, sir; *I left there in 1879.*"

This witness, it will be seen, says he heard her talk with Mr. E. A. McIntire in 1879 about buying real estate and she came in *frequently* for that purpose, but it is in evidence that there is not a deed of record to Emma Taylor prior to April 1, 1881, and that no person but the McIntires ever made her a conveyance; so that she must have kept up her talking with McIntire *for two years* or thereabouts before concluding to buy anything. But as this witness left here in 1879, about two years before *our* "Emma Taylor" makes her appearance as a buyer of real estate, his testimony, vague and *peculiar* as it is, proves nothing.

Harriet M. Harris (Rec., 334): Knew a Miss or Mrs. Taylor who used to take her meals at Forsyth's dining-rooms, where I used to get mine. I left Washington on the 3d of April, 1882, and I had quit taking my meals at

Forsyth's about a year previous to leaving Washington. From April, 1881, to April, 1882, I did not take my meals at Forsyth's. Personally I never spoke to Miss Taylor and had no acquaintance with her; I simply saw her in the dining-room and heard her spoken to as Miss Taylor. I do not know whether her name was Emma Taylor or not; I could not say. It might have been Jane Taylor, for aught I know. I only saw this lady *once* in Mr. McIntire's office; think it was probably in December, 1880, I saw her there."

It is plain from this witness' testimony that this Miss Taylor who took her meals at Forsyth's and that the witness saw *once* in McIntire's office might have been one of a dozen Miss Taylors. At all events this witness, like the preceding ones, saw her *before* April, 1881, and never saw her afterwards.

We come now to the testimony of a most important witness, John Taylor (Rec., 141): "No relation of Emma Taylor; used to sell ice cream to Emma Taylor in 1876-'8; saw her once or twice in McIntire's office in 1878 or 1879." One day McIntire asked him if he knew what had become of Emma Taylor.

"Question. You saw Emma Taylor, you say, at Mr. McIntire's office?

"Answer. Yes, sir.

"Q. When was it you first saw her there?

"A. In 1877 or 1878.

"Q. How long was it after you first saw her at Mr. McIntire's office that he asked you if you knew what had become of her?

"A. Well, I went into Mr. McIntire's office to rent a house. I got the keys from him to look at the house, and he asked me whether I knew anybody by the name of Emma Taylor, it being the same name as my last name, Taylor, and I said, 'Yes;' that I knew a lady named Emma Taylor who used to buy ice cream from me when I was in business, and he asked me where she was.

"Q. When was that?

"A. I was employed in the Pension Office, in the Shepherd building at that time.

"Q. How long after you first saw her?

"A. Well, *some time between 1880 and 1881.*

"Q. *That is when he first asked you what had become of her?*

"A. Yes, sir.

"Q. And from that time on whenever he met you he asked you *what had become of her?*

"A. Yes, sir.

"Q. *And you fix that date by the fact that you were then employed in the Pension Office?*

"A. Yes, sir; *I was then in the Pension Office, in the Shepherd building. I got my appointment on the 10th of March, 1879.*"

Rec., 149.

Observe that this witness *fixes the time* when McIntire first inquired of him about Emma Taylor by comparing that time with another time, the date of which is a matter of record, viz., his appointment to a position in the Pension Office on March 10, 1879, so that he could not have been mistaken in naming the date as being somewhere in 1879 or 1880 when McIntire *first* asked him what had become of Emma Taylor. *We know, then, the time when McIntire lost sight of her and first began to make inquiries about her*, and this is most important to be known, for John Taylor further testifies that at this conversation McIntire asked him to make inquiries for Emma Taylor and he promised to do so. He says, also, that he met McIntire frequently after this and *every time* he would meet him he, McIntire, *would ask him if he, witness, had heard anything of Emma Taylor.*

"Question. He would keep on asking you that?

"Answer. Yes; He wanted to know if I found out anything about what become of her, and I told him I had not.

"Q. You met him often since then?

"A. Yes, sir; I met him in his office and met him on the street, and he would ask me what had become of her, and I told him that I did not know and could not tell him.

"Q. Whenever he met you he would ask you about her?

"A. Yes, sir.

"Q. Probably three or four times a year?

"A. Yes, sir. Sometimes he would meet me on F street, or wherever he was on business, and he would stop and talk with me, and he would say 'Did you ever find out what became of Emma Taylor?' And I said, 'No; I could not find out; she has gone out West somewhere, but I do not know where.'

"Q. Those inquiries were kept up, commencing eight or nine years ago—when did he cease asking you about her?

"A. *A year or so ago.*

Rec., 145.

So that, according to this his own witness, assuming him to be truthful, a young woman by the name of Emma Taylor used to call at McIntire's office from 1878 to 1880. He lost sight of her in 1880 or thereabouts and would make inquiries about her every time he would meet the witness, John Taylor, up to "a year or so ago," and he would meet him "three or four times a year." Now, when we refer to the dates of the "Emma Taylor" deeds we find the first one executed by her to be the "joint deed" of Barbara Brown and *Emma Taylor* to Martha McIntire, bearing date April 25, 1881, and the last that of Emma Taylor to Martha McIntire, conveying the Brown, Ackerman, and Eller properties and bearing date September 6, 1884. *During, therefore, the very time when his own witness says he, McIntire, was looking for Emma Taylor and getting people to hunt up her whereabouts for him he would have us believe that he was buying from and selling to her these properties of the complainants.*

Of course it is not necessary for us to prove that there never at any time existed such a person as Emma Taylor; that would be impossible, for there were doubtless at that time and still are a number of persons of that name in this city, and indeed in any city of two hundred thousand population. Even, therefore, had there been a person of that name in McIntire's office prior to 1880—indeed, had it been

proved that a person of that name was there up to 1885—it would not establish the fact that *she* was the “Emma Taylor” who bought and sold these properties. Our proposition is that the grantor and grantee of these deeds is fictitious; that no matter what the name is, whether Emma Taylor or Jane Smith (and it might as well have been one as the other), there was no *actual* grantor and no *actual* grantee of that name, or of any other name, who paid the purchase-money in the one case or received it in the other; that it was never intended by McIntire, who drew up these deeds and used the name Emma Taylor as a mere “dummy,” that any person by that name should ever have any right, title, or interest in them. The name was used, just as fictitious names have been used before, to defraud and deceive, and merely showing that *at that time* there was a person of *that name* in existence will not prove that particular person to be the grantor or grantee of these several deeds.

And herein we submit his honor Mr. Justice Hagner, who delivered an opinion in this case in the special term, misconceived utterly the plaintiff's position in regard to “Emma Taylor.”

The learned judge says (Rec., 489):

“The court could not concede, except because of a stolid purpose to disbelieve every witness on the part of the defendants, that the non-existence of Emma Taylor is so conclusively established by the testimony that the complainant's assumption of there being no such person is justifiable. *Eight witnesses testify to seeing her* about McIntire's office, as large a number as either complainant adduced to support any assertion on that side.”

These eight witnesses are made up of the four whom we have already cited, the *three McIntires* and Joseph Forrest, a witness produced by the complainants themselves, who admitted that he had testified in the case of Wm. E. McIntire *vs.* E. A. McIntire that he was the grantee in a deed

from Emma Taylor through McIntire's agency, *and that he had never seen her*, and yet when summoned by us to repeat this testimony probably allowed the fear of weakening his own title to father his second thoughts upon the subject, and accordingly he testified, to our surprise and in a hesitating way, that he had "*somehow an impression* that upon one occasion either Mr. McIntire or his clerk pointed out some party in his office as Emma Taylor, but I had no conversation with her at all." Of course this is not evidence that he ever saw "Emma Taylor," yet the court included him in the "eight witnesses." However, it was not for this purpose that we digressed into this observation. What we wish to observe is that, leaving out the three McIntires, not one of these witnesses undertakes to swear that the Emma Taylor he or she saw, if indeed he or she saw *any* Emma Taylor at all, was the person who *signed* these deeds or was the *grantee* in any of them. We submit, in view of the suspicious circumstances tending to show the non-existence of this alleged Emma Taylor, that we are entitled in common justice to have *the Emma Taylor* which these witnesses say they saw long before the date of any of these deeds *identified* as the *same* Emma Taylor who, it is claimed, signed them years afterwards; for, suppose the name, instead of being Emma Taylor, had been John Smith, certainly producing witnesses to swear that they saw a man by the name of John Smith in McIntire's office a year or more prior to the execution of these deeds would not prove that *he* was the John Smith named as the grantee in the deeds. Some identification, especially when there are suspicious circumstances and the identity is disputed, is necessary.

As a matter of fact, McIntire has been unable to produce a single person besides himself and sisters who ever saw any one by the name of Emma Taylor in or out of his office *after* 1880; but, more than this, the witness Harleston says he was in McIntire's office "from the fall of 1879 until the

fall of 1884," which would cover the entire period of the "Emma Taylor" deeds, and yet here is his testimony:

"Q. While you were in that office do you recollect meeting any such person as Emma Taylor?

"A. I do not recollect doing so.

"Q. You do not recollect meeting any such person as Emma Taylor?

"A. No, sir."

Rec., 74.

If McIntire tells the truth, Harleston certainly would have met her, for, according to McIntire, she was during this period coming to his office "frequently." Often, he says, she would come "three or four times a week" (Rec., 762).

Thus with Harleston, the very man who would have seen her if McIntire is telling the truth, *having no recollection of her* whatever, and not a single person being produced except his two sisters who ever saw her or heard of her during the period when, if she were not a fiction and a myth, many persons would have seen her, we are asked to believe that she was coming into his office during all that time "three or four times a week" and carrying on these numerous transactions.

The moment we accept "Emma Taylor" as a fictitious character every action of McIntire becomes explainable and entirely consistent with that fact; on the other hand, accept her as a genuine person and his actions in respect of her become utterly inexplicable. Thus every deed made by or to "Emma Taylor" which appears on the land records of this District is in evidence in these cases (see testimony of W. G. Cleary, Rec., 100), and *every one* of them was executed through the agency of E. A. McIntire, *every one* of them was recorded by him, and *every one* of them returned to him by the recorder of deeds after they were recorded.

Allen E. Wilson, a clerk in the recorder's office, testifies (Rec., 354) that for all deeds brought to the recorder's office for record receipts are given, and that when the deed is

called for after being recorded the name of the party to whom the deed is given is entered upon the margin of the record.

"Q. I see, for instance, on this certified copy of deed from Edwin A. McIntire, trustee, to Emma Taylor (Ex. A. H. No. —) on the margin thereof this: 'Del'd to E. A. McIntire July 2d. 1881. R. R.' That means what?

"A. That means that the original deed was delivered to E. A. McIntire July 2, 1881, and the receipt returned."

Then he testifies (Rec., 354) that the margins of each of the deeds in the following list are respectively marked as delivered to E. A. McIntire thus:

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 42; del'd to E. A. McIntire July 2, 1881. R. R. [R. R. meaning receipt returned].

"Swartzell to Emma Taylor, Ex. A. H. No. 44; del'd to E. A. McIntire Feb'y 21, 1882. R. R.

"Eller to Emma Taylor, Ex. A. H. No. 44; del'd to E. A. McIntire June 18, 1882. R. R.

"Jenison to Emma Taylor, Ex. A. H. No. 45; del'd to E. A. McIntire June 5, 1882. R. R.

"Herndon to Emma Taylor, Ex. A. H. No. 46; del'd to E. A. McIntire June 7, 1882. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 47, del'd to E. A. McIntire July 17, 1882. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 48; del'd to E. A. McIntire Jan. 5, 1883. R. R.

"E. A. McIntire to Emma Taylor, Ex. A. H. No. 49; del'd to E. A. McIntire Aug. 6, 1883. R. R."

"Q. If the originals of these deeds had been delivered to the grantees, this marginal note would have shown that fact, would it not?

"A. Yes, sir; instead of being marked delivered to E. A. McIntire it would have been marked to the grantee.

"Q. And that, you say, has always been the practice of your office?

"A. Yes, sir."

Thus notwithstanding this proof *by the record* that every deed ever made to "Emma Taylor," instead of being returned to her, was returned to E. A. McIntire, he deliberately swears he has no recollection *in any case* of such being done!

Again, we establish out of the mouths of the tenants of these respective properties at the time when McIntire says "Emma Taylor" owned them that they paid the rents, not to "Emma Taylor," but to E. A. McIntire. Thus—

John Holmes (Rec., 778) says he paid the rent to E. A. McIntire of the Ackerman property during the period when Emma Taylor is alleged to have owned it.

Emily Miller (Rec., 883) testifies to same effect as to the Southey property.

Lucinda Freeman (Rec., 927) to same effect as to the Hayne property.

The Pryor property was vacant during the Emma Taylor ownership.

Now McIntire is asked as to the Ackerman property (Rec., 282):

"Q. Did you have anything to do with the collection of the rents of that property during the interval between April 24, 1882, and September 6, 1884?

"A. *I could not say.*

"Q. That interval was the interval which existed from the time the property was sold by you to Emma Taylor for Mrs. Ackerman and afterwards sold by Emma Taylor to Martha McIntire?

"A. *I have no recollection.*"

And as to the Hayne property (Rec., 281):

"Q. Who collected the rents of the Hayne property on 9th [E] street after you sold it to Emma Taylor and until it was sold by him to Alfred Brown?

"A. *I have no recollection.*"

And as to the Southey property (Rec., 879):

"Q. When she [Martha McIntire] sold to Emma Taylor who collected the rents?

"A. I collected for my sister all the time.

"Q. But after she sold to Emma Taylor who collected the rent?

"A. *I do not recollect.*"

And yet he never fails to recollect that he collected the rents for his sister and for Hayne and even for Southey away back in 1874-'5. He says: "I remember *distinctly* collecting the rents for Southey (Rec., 855)." All of these are for period *antedating* the collections for Emma Taylor.

So as to the taxes. We have proved by a clerk from the tax-collector's office that during the same periods McIntire paid all the taxes on these properties (see testimony of Fitzhugh, Rec., 681), and yet in every instance McIntire says he has "no recollection of doing so," until, as we have before observed, he is brought before the auditor for an accounting, after the court has held Emma Taylor to be a myth, when he presents bills which he claims he paid during this period and asks and gets credit for them although in the main case he time and again swore that he never paid any bills for repairs during the time he claimed "Emma Taylor" owned these properties. Can stultification go further than this?

So as to the manner in which the purchase-money was paid for the Pryor and Southey properties which he alleges he bought from Emma Taylor for his sister Martha for \$2,500:

"Q. How was the twenty-five hundred dollars paid to Emma Taylor?

"A. I could not say positively.

"Q. You cannot say whether it was paid to her by your check or in cash?

"A. No, sir; I could not say positively.

Rec., 261.

* * * * *

"Q. And you do not recollect the fact of making such payment by check?

"A. No, sir.

"Q. And you do not recollect the fact of making the payment in cash?

"A. I recollect that the payment was made.

"Q. But you cannot say whether it was made in cash or by check?

"A. No, sir. I cannot recollect in regard to any particular transaction, unless there be something to call my attention to it."

Rec., 262.

So as to how he got this \$2,500 from his sister Martha:

"Q. How did your sister Martha give you this money to pay for the Pryor and Southey properties—by check or in cash?

"A. That I do not recollect.

"Q. Have you any memorandum at your office which would show whether she paid you this money in cash or by check?

"A. I have not been able to find any so far."

Rec., 264.

So as to the time when he says Emma Taylor bought the Southey property from his sister for \$2,000:

"Q. When Emma Taylor paid you \$2,000 for this property for your sister, how did she pay it to you?

"A. I have no recollection.

"Q. Do you not remember whether she paid it to you in cash or by check?

"A. She may have by both or either?

"Q. Have you any memorandum at all of that payment made to her?

"A. I cannot find anything at all as yet" [and he never did.]

Rec., 878.

So as to the transaction in which he says he bought from Emma Taylor for his sister Martha the Ackerman and Eller properties :

"Q. What did your sister pay you at that time?

"A. I think it was twelve hundred dollars.

"Q. You cannot remember whether it was paid in cash to you to pay to Emma Taylor or paid to you by your sister by check ?

"A. I have answered that question a dozen times, and I answer it again in the same way, that I cannot remember those particulars in any transaction."

Rec., 266.

But he does remember "those particulars" when he wants to. Thus in this very transaction he declares he can remember "distinctly" the full particulars about the signing and acknowledgment of the deed by "Emma Taylor," when, where, and how it was done, the witnessing of it, &c. :

"That signature was made by Emma Taylor in my presence and in my office and in the presence, also, of Mr. Richey as a witness, who was there then at the time."

[By Mr. HENKLE:]

"Q. You say that you saw her make that signature in your office?

"A. Yes.

"Q. And it seems to have been signed by William Helmick and H. Richey as subscribing witnesses. Did you see these two witnesses sign also?

"A. I did.

"Q. Were you present at the acknowledgment?

"A. Yes, sir. That was done at my office. The whole of it was done at my office."

Rec., 233.

To tell us that he can remember all these details but cannot remember the much more important matters of the purchase-money payment in any of these numerous transactions is simply absurd. We submit his testimony to the

court, and we ask it to observe in the course of its reading his remarkable memory for *minute details* of matters about which there is *no dispute*. Thus see his testimony in regard to the Southey note transaction of over ten years prior to any of his dealings with "Emma Taylor," and his testimony in regard to his dealings with Hayne and Mrs. Ackerman, with Eller, with Barbara Brown, and, indeed, in every instance where immaterial facts are being testified to, and nobody proposes to contradict him; but touch him about "Emma Taylor" in any place where if he should testify positively to payment of checks or cash we could trace them to their source, he instantly refuses to commit himself.

If McIntire is telling us the truth, he had for nearly four years, especially in 1881 and 1882, the most intimate business relations with "Emma Taylor." He was buying and selling from and to her constantly. Thus by examining the list of deeds given elsewhere in this brief we will see that on April 1, 1881, he sold her the Brown property for \$500 and made her a deed of it. Later in the same month he paid her back this \$500 and she joined with Mrs. Brown in conveying to Martha McIntire. Two months afterwards she loaned on the Pryor property to Jenison \$425. Three months later she makes a deed to Martha McIntire of the Brown, Eller, and Ackerman properties. Four months later, January 11, 1882, she bought the Eller property for \$400. The *next day* she bought from Martha the Southey property for \$2,000. Three months later she bought the Pryor property from Jenison for \$425. Five days later she bought the Ackerman property for \$300. Twelve days later she bought the Willis Herndon property, worth about \$1,000. Two months and a half later she bought the Hayne property for \$500. Three months later she bought the William E. McIntire interest in his uncle David's estate, worth several thousand dollars, for \$200. In the same month, through McIntire, she sold the Herndon property to Forrest for \$900. Four months later she sold, through

McIntire, to Alfred Brown the Hayne property for \$1,100. Two weeks later she sold to McIntire's wife the interest which she had purchased four months previously in David McIntire's estate.

Can anybody be made to believe that a real-estate agent could deal so extensively and so frequently with his principal and for so long a time collect rents for her from so many properties and receive from her and pay to her so much purchase-money and not only show no accounts with her upon his books, for he says he cannot,* but completely forget that he ever collected rent for her at all, even when taxing his memory to remember it?

So as to the Alfred Brown notes. Alfred Brown, when he bought the Hayne property from Emma Taylor, May 14, 1883, gave \$200 in cash and twelve notes of \$75 each, payable at intervals of three months, the last maturing in three years, viz., May 14, 1886. Alfred Brown says he paid every one of them as they fell due to E. A. McIntire personally (Rec., 941). Now, McIntire says "Emma Taylor" disappeared from Washington about 1884 (Rec., 213). For whom, then, was he collecting these notes in 1885 and 1886? McIntire as usual says he has "no recollection" of collecting them. It is utterly incredible, especially when these dealings ran up into such considerable sums of money, that he should entirely forget *every single one of them*. No one can believe that he was collecting these rents, paying these taxes, and collecting these notes for a person about whom he can remember so little. For whom, then, was he collecting them if not for himself, cloaked under a fictitious name, a name adopted because, being a trustee, he dared not put the title in his real name? The facts are incompatible with any other theory.

* By Mr. HENKLE: "The witness, in response to the demand for his rent books regarding the account of Emma Taylor, has repeatedly said that he had no account with Emma Taylor for rents, and that his books show no account with her for rents" (Rec., 97).

But we are only at the very threshold. "Emma Taylor," McIntire tells us, was a woman "constantly looking out for bargains" in real estate. Yet she never found anybody with a bargain except McIntire, for we have in evidence a complete list of the properties bought and sold by her in this city, from which it appears that she never bought or sold a single piece except through McIntire's agency, and every one of them, except in the case of Alfred Brown and Forrest, the purchase-money of which was received by him as sworn to by Brown and Forrest, *eventually gravitated to his sister Martha.*

So, too, the method of recording the "Emma Taylor" deeds is irreconcilable with the theory that they were honest deeds. The testimony shows that whenever a conveyance was made to Martha McIntire or E. A. McIntire by anybody but "Emma Taylor" the deeds were *immediately* recorded, but whenever "Emma Taylor" made a conveyance the deed was not recorded for years afterwards, and most of them only after these suits were brought. Of course, if "Emma Taylor" were a fiction, with the title standing of record in that fiction, a forged deed to Martha McIntire, with Emma's name to it as the grantor, created no immediate necessity for recordation, because there was no danger of a *fiction* making a subsequent conveyance to an innocent third party for value.

The following table shows the dates of acknowledgment of the various deeds in evidence in these cases, which came into McIntire's hands as agent or principal—that is to say, those deeds the recordation of which McIntire attended to. By this table it will be seen that in every instance, when the deeds were made by grantors parting with their interest in good faith to E. A. McIntire or to "Emma Taylor" at his suggestion, McIntire caused them to be immediately recorded, while, on the other hand, the *fraudulent* deeds, including those with the forged signatures, did not go upon the record for years afterwards.

DEEDS OF BONA FIDE GRANTORS—RECORDED BY M'INTIRE
IMMEDIATELY.

"*Mary C. Pryor et vir to E. A. McIntire* (Ex. A. H. No. 4; Rec., 427), deed to secure Hartwell Jenison \$450; acknowledged May 27, 1880; recorded May 28, 1880.

"*Barbara Brown to E. A. McIntire*, deed to secure \$400 (Ex. A. H. No. 3; Rec., 710); acknowledged June 12, 1880; recorded same day.

"*Hartwell Jenison et ux. to 'Emma Taylor'* (Ex. A. H. No. 25; Rec., 445), deed dated and acknowledged April 19; recorded April 21, 1882.

"*William E. McIntire to 'Emma Taylor'* (Rec., 103). This is the deed which McIntire fraudulently obtained from his nephew of that nephew's interest in the estate of David McIntire. It is dated December 2, 1882, and is, of course, recorded the same day.

"*Annie Ackerman to 'Emma Taylor'* (Rec., 102), deed; acknowledged April 25 and recorded April 27, 1882, probably the same day Mrs. Ackerman received her money.

"*Joseph Hayne et ux. to E. A. McIntire, trustee* (Ex. A. H. No. 20, Rec., 1009), deed to secure Hayne's note; acknowledged in South Carolina, September 23, and recorded September 28, 1881—probably the very day it reached Washington."

FRAUDULENT DEEDS—NOT RECORDED FOR YEARS AFTER
THEIR DATES.

"*Barbara Brown and Emma Taylor to Martha McIntire* (a forged deed). Date of deed, April 25, 1881; acknowledged April 28, 1881; recorded April 7, 1891, lacking not quite two weeks of ten years between the date and the record. It was not recorded until after the filing of this bill (Ex. A. H. No. 1, Rec., 707).

"*Mary Pryor et vir to Martha McIntire*, dated May 3, 1881; acknowledged same day. This is the deed which by its erasure shows that E. A. McIntire was the original grantee. According to McIntire, the title which his sister derived by the deed was abandoned about a month after the execution of the deed, but no explanation is given of the failure to record it during the time when title was claimed

under it. The deed was *never* recorded (Ex. A. H. No. 3, Rec., 425).

"*E. A. McIntire to Hartwell Jenison.* This is the deed which McIntire made to Jenison under the foreclosure sale. It is dated June 28, 1881, but for a purpose already explained was not recorded until April 21, 1882, *nearly ten months afterwards* (Rec., 8, 207).

"*'Emma Taylor' to Martha McIntire,* deed in fee; conveys Southey and Pryor properties; dated May 31, 1884; acknowledged same day, but not recorded until October 14, 1886, *nearly two years and five months afterwards* (Ex. A. H. No. 14, Rec., 436).

"*'Emma Taylor' to Martha McIntire,* deed conveying the Barbara Brown, Eller, and Ackerman properties. It is dated September 6, 1881; acknowledged same day, but not recorded until April 7, 1891, *six years and seven months afterwards.* It was recorded *after* the filing of the bill (Ex. A. H. No. 2, Rec., 709).

"*E. A. McIntire, trustee, to Emma Taylor,* foreclosure deed of Hayne property; dated August 28, 1882; acknowledged September 1, 1882; recorded May 16, 1883, *nine months afterwards.* It was kept off the record until the sale to Alfred Brown, and was then recorded with the deed to him, in order that Brown's trust to McIntire should show a straight record title (Ex. A. H. No. 49, Rec., 460).

"*Annie Ackerman to Martha McIntire,* deed in fee; dated September 6, 1884. This was a *forged* deed and was never recorded" (Ex. A. H. No. 7, Rec., 811).

It is curious to observe how "Emma Taylor" was always on hand the moment McIntire needed her. Eller says (Rec., 81) that when "McIntire came to collect interest on his note he was sick, and had been treated so badly by McIntire that he determined to give up everything, and told him so." Thereupon, Eller says, "he went off, and came back *in about an hour and a half* and gave me a paper to sign," viz., a deed to "Emma Taylor" (Ex. A. H. No. 29, Rec., 421). So, also, when Annie Ackerman wanted to sell her property, "Emma Taylor" bobs up immediately like the harlequin in the pantomime. So in all these pretended auction sales

"Emma Taylor" was right on hand as "the highest and best bidder;" and yet he tells us he never knew her address, or where she was employed, or wrote to her to come to the office; she just "dropped" in "as often as three or four times a week" (Rec., 762). And moreover, as we have seen, Harleston, his clerk during this very period, whose business it was to be constantly in the office, never saw or heard of such a person, although she "dropped in three or four times a week." Nor, as we have seen, can he produce a living soul except his two sisters who are willing to swear that they ever saw her or knew her between 1881 and 1884. In his joint answer with his sister Martha to the sixth interrogatory annexed to the bill in the Brown case he says (Rec., 573), "We also know of *ten* of our relatives conversing with her at different times." Where are those ten relatives? He has not produced a single one of them, unless it be Emma T. McIntire.

His convenient excuse of lack of memory when pressed for the most ordinary details in regard to this creation of his imagination was not without its purpose. Had he testified to a single place where "Emma Taylor" had lived; had he stated that he had paid her or she paid him by check or in cash, as the case might be, or named some *living* person who ever saw her during 1881-'4, we could have directly contradicted each of these items of testimony and shown that she had never lived at the place named, nor was employed, as he stated, nor was paid by check, for bank checks can be traced; nor by cash, for that also could be traced to its source. We could have shown also that the person named as having known her never knew her, &c. Knowing, therefore, that if he testified specifically as to these matters he could be plainly entrapped, he wisely confines himself either to general statements or evades all inquiry by saying he does not remember. Thus it will be seen that with all his bold forgeries and perjuries he is still cunning enough to attempt to cover up his tracks in a few

of the many directions in which we have followed and exposed his rascality. But is it cunning after all? Is it not rather his only resort—to plead lack of memory—when questioned about the existence of a person who never had any existence and who, therefore, lived nowhere, was employed nowhere, was paid neither by cash nor by checks, and was known by no one.

Besides his lack of memory in this particular, he has another ready resort, and a very common one in such cases—a *fire*. He is asked if he has any letters, receipts, accounts, or written evidence of any sort showing that he ever had any transactions with her, and he answers that he did at one time have such, but that they have been lost or destroyed utterly and to the most insignificant scrap by “a fire” which he says occurred in his office a few years ago. But on cross-examination as to this very convenient fire—his refuge whenever hard pushed for explanations—his story turns out as fabulous as “Emma Taylor” is fictitious. No one can read his account of that “fire” and not be convinced that he is only adding to his list of perjuries when he talks of his burned books and papers. But the truth cannot be covered up by mythical ashes any more than by a fictitious female. His story cannot stand dissection for a moment. What is his story? He says (Rec., 670-673) his office consisted of a single room of about thirteen feet front by forty feet deep. In the back part of this office, separated from the front part of the room by a counter, was his desk, and alongside of this desk a waste-paper basket. While he was in the room one morning by himself somebody, he does not know who, threw a lighted cigar stump in his waste-paper basket, though how a stranger with a lighted cigar could get over the counter into the back part of his office and throw the lighted stump into this basket he does not explain. Anyhow, this cigar stump set on fire the papers in the basket, and, although *he was within a few feet of it*, he failed to discover it in time to stay its ravaging flames!

Remorselessly it destroyed every paper which would have shown anything about "Emma Taylor," and in addition burned up about twenty account books, including one large ledger of about 400 pages, which it so completely destroyed that nothing was left but the back and the cover.* Besides this, he would have us believe that he came near being burned up himself! Truly how great a fire a little spark kindleth. The neighbors, he says, rushed in to help him put it out, but, strange to say, he cannot name a single person who was present, and they his neighbors, too! Moreover, this marvelous fire seemed to confine its ravaging yet discriminating appetite to everything connected with "Emma Taylor." All of his correspondence and other papers belonging to the *same* period and the *same* properties which showed his *admitted* relations with Hayne, Jenison, Pryor, Ackerman, and Brown are considerably left by the flames, *without a mark of fire or even stain of smoke*, that they might thereafter be offered without stint as exhibits in these cases to corroborate his undisputed statements of immaterial facts; but the "Emma Taylor" letters and papers, all of which it is denied by us ever had any existence, are swallowed up and consumed to the last vestige. As this remarkable story rests alone on McIntire's testimony, we must either believe this fire to be fabulous or declare that the days of miracles are not yet over.

There were certain matters, however, in regard to this "Emma Taylor" that McIntire and his sisters could not

*This is one of those improbable stories of McIntire with which his testimony abounds. It is a fact within the knowledge of every one that a thick and compact book like a ledger of 400 pages, by the very reason of its compactness, rarely, if ever, burns up entirely, certainly not by the burning of loose papers around it; the edges char, the cover and a few of the outside pages may be destroyed, but the greater part of the book remains—soiled and smoked, it is true, but still there. It is also to be noted that McIntire does not explain how the loss of this ledger could deprive him of any evidence. He forgets that he has several times testified that he never kept any accounts with Emma Taylor.

very well say they had forgotten without practically abandoning their whole case. Thus they ventured to describe her, tell her age, and how often they had seen her. It was leaving us a very narrow margin whereon to direct our attack and show from these few particulars that they were deliberately swearing falsely as to these things, but we did it, completely and overwhelmingly.

First as to the number of times they saw her. Martha McIntire is required to make answer to the interrogatory filed with the Pryor, Brown, Ackerman, and Southey bills of complaint, which interrogatory is substantially the same in each and is as follows :

"Who is the Emma Taylor described in the deeds of April 1, 1881, April 25, 1881, and September 6, 1884?"

To this interrogatory she, in the Brown and Ackerman cases, answers :

"Emma Taylor is a lady whom Martha McIntire met some *three or four times* at the office of E. A. McIntire, 918 F street, Washington, D. C., and *once* in Philadelphia."

In the Pryor case the wording is substantially the same :

"I have seen Emma Taylor *a number of times*. I paid her the exact amount named in the deed to me, M. M. McIntire."

Her testimony before the examiner was given more than a year after she had thus four separate times made these answers to the interrogatories, and the sequel shows that she had forgotten all about them, for, knowing full well that she had never seen "Emma Taylor" and fearing to be catechised as to the time, place, and circumstances of her meeting this mythical personage, she limits herself to seeing her but *once* and not "three or four times," as she had previously sworn, and that once, she says, was at her brother's office. She, of course, does not know that she

is contradicting herself, and so, whenever it is sought to make her admit that she had seen Emma Taylor more than once, she emphatically reaffirms her statement that once, and once only, did she ever see this "Philadelphia lady." Thus the matter stood until toward the closing of the depositions, the taking of which for the defense alone ran through more than a year. Then E. A. McIntire discovers on reading the pleadings that his sister Martha has, as the saying is, "put her foot in it." He attempts to come to the rescue, and he says (Rec., 767):

"In answer to the interrogatories of this bill I think I made an error in regard to the question about when 'Emma Taylor' had been seen. *I wrote the answer myself.* I confounded what my sister Emma had told me with what my sister Martha had told me. I stated that my sister Martha had met 'Emma Taylor' three or four times, one time in Philadelphia, whereas my sister Emma had told me that. My sister Martha had not met her that number of times."

Even if it were true that E. A. McIntire wrote the answer to this interrogatory, which Martha was required to answer, it is difficult to believe that an honest person would by an oversight read, sign, and swear to a written statement of this kind if it were false, but when it is done not once, but four times, on four different occasions, it is thoroughly incredible; but E. A. McIntire, instead of pulling his sister's foot out of the trap, gets both of his own feet into it, for if the court will refer to the *original* answer of Martha in the Pryor case, a lithographic copy of which we have inserted in this brief, and the original of which is brought here for your inspection, it will be seen that, so far from its being written *by him*, as he swears, it is in Martha's *own handwriting and signed by her!* Thus is the old saying verified, that "one lie leads to another," and not only to another, but to several, for his sister Emma, whom he says he had in mind when answering this interrogatory, practically says *she never met Miss Taylor in Philadelphia.* Thus, on page

Answers made by defendant Martha McIntire to Interrogatories.

1. Emma Taylor was a Philadelphia lady who lived for awhile in Washington D.C. but is now living in the west.

2. I have seen Emma Taylor a number of times. I paid her the exact amount named in the deed to me, Mc, Mc Intire

And having fully answered the several paragraphs in the original and amended bills, these defendants now pray that they may be dismissed with their costs

Edwin A. McIntire

Martha McIntire

299 of the Record, she says she saw Emma Taylor at the Brown sale in 1881:

"Q. Well, you say that was the *first* time you ever met her?

"A. Yes.

* * * * *

"Q. Now, when did you next meet her?

"A. I met her at the office of my brother, Edwin A. McIntire, and in the street *after* I moved here.

"Q. Well, how often did you meet her at your brother's office or in the street?

"A. In all about three or four times."

Rec., 309.

So neither Martha nor Emma ever told him about meeting Emma Taylor in *Philadelphia*.

But again: Martha, let us not forget, insists upon it that she saw her but *once*, and that was at her brother's office, yet if E. A. McIntire tells the truth Martha saw her not only at his office, but at Helmick's office. Martha says (Rec., 137):

"Q. You say that you only saw Emma Taylor *once*?

"A. Yes, sir.

"Q. When did you see her?

"A. In the office of my brother, Edwin A. McIntire.

"Q. When was it that you saw her?

"A. I do not remember.

* * * * *

"Q. Who introduced you?

"A. I do not remember whether my brother or his clerk introduced me."

On the other hand, E. A. McIntire, on page 268 of the Record, when telling us about taking Barbara Brown to Helmick's office and there meeting Emma Taylor and fixing up the "joint deed," says that Martha was there *with Emma Taylor* and surrendered the \$400 note to Barbara Brown and paid her one hundred dollars.

"Martha McIntire surrendered a note that she held."

"Q. Surrendered whose note?"

"A. The note of Barbara Brown.

"Q. To whom?"

"A. To Barbara Brown. *They were both there at the time.*"

Now, then, let us look into their testimony in regard to Emma Taylor's age. We must premise as to this that the woman whom the witnesses Atkinson, Harris, Shafer, and John Taylor say they saw prior to 1880 cannot be the woman that the McIntires claim signed these deeds, because, while those witnesses substantially agree about the age of *their* Emma Taylor, the McIntires give her an entirely different age, showing, if they are testifying to the truth, that the McIntire "Emma Taylor" is *quite another woman!*

Thus Atkinson says (Rec., 150) she was between twenty and thirty (quite a wide margin, it must be conceded). Mrs. Harris says (Rec., 336) she was between twenty-five and thirty. Shafer says (Rec., 154) if she were now living she would be about forty years old, which would make her about twenty-seven in 1879, when he saw her. John Taylor says she was between twenty-four and twenty-five.

Now, what does Martha say? She was asked (Rec., 138) how old was "Emma Taylor" when she saw her, and she answers:

"A. Middle age; *forty or forty-five years of age.*"

Nor is Emma T. McIntire much better:

"I would say she was between twenty-five and thirty-five.

"Q. That is a very wide margin, between twenty-five and thirty-five. A woman at twenty-five does not look to be thirty-five years of age. Can you not come closer than that?"

"A. I cannot to a lady's age.

Rec., 315.

* * * * *

"Q. Well, now, between twenty-five and thirty-five might

make her only twenty-six or it might make her only thirty-four years of age?

"A. Well, she might have been *twenty-six* or *thirty-four*." Rec., 316.

And E. A. McIntire gives her two ages:

"She was a lady of medium height, about *thirty* years of age; I should say *thirty* or *thirty-five*" (Rec., 213).

And again, on page 237, forgetting that he had previously made her thirty or thirty-five, he says:

"She was *twenty-four* or *twenty-five* years of age in 1881."

That was the time Martha McIntire thinks she saw her, and according to her she was *forty-five*. So that these McIntires give us our choice of any age for "Emma Taylor" between twenty-four and forty-five!

And so we might go on contrasting by the "deadly parallel" these contradictory statements with which their testimony abounds. True it is that in any large body of testimony contradictions are very likely to be met with, even when honest witnesses are testifying, but they are of trivial and immaterial matters, not such as here sworn to point-blank both ways. Thus, to give another example, McIntire is handed by his counsel the original deed of "Emma Taylor" to Joseph Forrest—the *Emma T.* in which is so strikingly like the signature of *Emma T. McIntire* that we have contrasted them at the top of the large photographic exhibit of the Emma Taylor and Emma T. McIntire signatures:

"Q. State what you know of the signature of Emma Taylor to that deed.

"A. In this deed I know that to be her signature; *I saw her sign it there and I remember it distinctly.*"

And, again, a couple of lines below:

"I know it is not the signature of Emma T. McIntire; I know it to be the signature of Emma Taylor. *I saw Emma Taylor write it*" (Rec., 231).

But when asked some time later about the very same deed by complainant's counsel :

"Q. Did you see her make that signature to the deed of December 30 from Emma Taylor to Joseph Forrest?"

he forgets what he has previously sworn to so positively, and says:

"A. *I have no recollection of seeing her write that signature. I have no recollection of it whatever now, but I may have seen her*" (Rec., 278).

A little lower down on the same page will be found the following, which we will let speak for itself. His attention is called to the palpably varied character of the Emma Taylor signatures—*e. g.*, the signature to the Forrest deed and the totally unlike signature to the Barbara Brown deed. Though claiming to be an expert (Rec., 278), he swears, whether honestly or not will be for your honors to say :

"I do not think those signatures are *varied*."

At page 653 of the Record he says that he erased no part of the "joint" deed from Barbara Brown and Emma Taylor to Martha McIntire except the name of David McIntire ; that he prepared the deed at his office, but did not fill up the smaller blanks (for the insertion of the pronoun, &c.) until he got to Helmick's office, when, finding Emma Taylor there, he filled them up in the feminine gender and plural number.

"I state now positively, upon looking at the deed, that the *smaller blanks were not filled out at that time*," viz., at his office.

On the other hand (Rec., 231), he is equally positive that the smaller blanks had been filled up, and that when he got to Helmick's office he not only erased David McIntire's name, but "altered the deed in other regards," viz., by

erasing these personal pronouns so as to change them from masculine to feminine.

"The deed was altered in *other regards* so as to make the numbers plural instead of singular, and to make it feminine gender instead of masculine where the *pronouns* occur."

And lower down on the same page :

"I scratched out the name David McIntire because he declined to take the property or hesitated about it, and I *altered the rest of the deed* so as to conform to that alteration."

But we shall presently come back to this David McIntire story.

Another glaring evidence of the fraudulent character of these deeds will be found in the irreconcilable explanations which are alternately given by McIntire and his sister Martha as to the reasons why the deeds were not recorded.

The explanation as given in the answer in the Brown case for not recording them will be found in the Record, p. 572, in which, after admitting the failure to record, it is said :

"The delay in recording them was pure carelessness and ignorance on the part of the defendant Martha McIntire, who was under the impression that the recording of deeds was solely to protect the grantee in the event of the loss of the deed, and as she had the deeds in a vault she felt perfectly safe."

If Martha McIntire was the frequent purchaser of real estate and the large and frequent lender of money on deeds of trust, as she claims she was, her experience going back to 1876, when she yet lived in Philadelphia, it would seem remarkable that she should not have learned either from her brother or some one else the necessity for recording deeds, but be that as it may let us see what the testimony discloses :

On the 6th of May, 1881, while she was still living in Philadelphia, E. A. McIntire claims to have purchased for

her the Pryor property for the sum of five dollars, subject to encumbrances of about \$500. On cross-examination he says:

"Q. When you took this deed from Pryor and wife to your sister, Martha McIntire, why did you not record it?

"A. I gave it to her. I do not know why she did not record it."

"Q. Would you give your sister the deed for her to record? Would you not record it yourself?

"A. No, sir; *I would let her record it for herself. She knows where the record office is as well as I do, both here and in Philadelphia.*"

Rec., 245-'6.

Now, then, let us not forget that McIntire never varies from this position. He insists, whenever asked about it, that he always gave Martha her deeds to record; that he never undertook to attend to that part of her business. This is important to remember, because we shall presently see that Martha flatly contradicts him. It is claimed by McIntire that "Emma Taylor" conveyed Martha the Southey and Pryor properties May 31, 1884, but the deed, it is admitted, was not recorded until October 14, 1886. Now McIntire is asked (Rec., 262):

"Q. Why was that deed kept off the record until October 14, 1886?

"A. I have no idea at all; *it was left in the possession of my sister, Martha McIntire.*

* * * * *

"Q. Now, you have no explanation whatever to give why this deed was kept off the record from May 31, 1884, until the 14th day of October, 1886?

"A. Nothing more than the explanation which she makes herself. It was her doings. *She locked it up in the safe-deposit company.*"

This safe-deposit vault was not rented, as we shall see, until March, 1885, so this excuse will not pass muster.

Again, the Barbara Brown and Emma Taylor joint deed of April 25, 1881, to Martha McIntire was not recorded until April 7, 1891. In the meantime, on September 6, 1884, "Emma Taylor" conveyed the property a second time to Martha in the same deed that conveyed the Ackerman and Eller properties. He is interrogated (Rec., 266) as to this:

"Q. Now, you say that the reason this Barbara Brown property was included in this deed of September 6, 1884, was because the previous deed made by Barbara Brown and Emma Taylor was not recorded. Is that the reason?"

"A. I do not think I said that. I said it could not be found for some reason or other; possibly because it was not recorded, but I have no recollection of that. I say that might have been the reason.

* * * * *

"Q. So, as a matter of safety you put it in this deed of September 6, 1884; is that correct?"

"A. Yes, sir.

* * * * *

"Q. Having had the experience of your sister Martha failing to record the first deed from Emma Taylor to her of the Barbara Brown property, you had Emma Taylor make another deed of conveyance to your sister of the same property, and yet you did not look after the recording of that deed?"

"A. It was not my business to do that. I very likely suggested it at the time, but I do not know."

Rec., 266-'8.

"Q. When a deed was made to her [Martha] of property you always gave her the deed to record, and you never recorded them yourself?"

"A. Yes, sir. I would not say always, but it is my impression *that I always did*.

Rec., 318.

* * * * *

"Q. You sent on the deed of the Barbara Brown property to your sister in Philadelphia, did you not?"

"A. I either sent it to her or took it to her there. I do not know which, but I gave it to her.

"Q. Why did you not record it before you sent it to her?

"A. I have no recollection of the circumstances at all after the deed was made.

"Q. Is it likely that you, being a real-estate man, would have purchased a piece of property for your sister and then send the deed to her without having it first recorded?

"A. I found a deed this morning which was in that condition. I do not know whether I gave it to her or mailed it to her or sent it to her by some one of the family.

"Q. Did you intend that she should send it back to you to have it put on record?

"A. If I had a clear recollection of how it was gotten to her I could answer that question, but I cannot because I do not know."

Rec., 657.

These excerpts speak for themselves. They show that according to McIntire it was his sister's business to record these deeds. Now, let us see how flatly Martha's account of this matter contradicts her brother's.

At page 752 she is interrogated by her counsel in reference to the deed of the Ackerman and Eller properties, which we will remember are claimed under *one* deed from "Emma Taylor," dated September 6, 1884.

"By Mr. HENKLE:

"Q. What did you do with it immediately after your brother gave it to you?

"A. I took care of it.

"Q. Why did you not record it?

"A. Well, I do not know. I suppose it was carelessness. There are a good many things that I ought to have done, but, like other people, I forget things sometimes.

"Q. You did not record the Southey deed either?

"A. There were *two* or three deeds that were not recorded."

[NOTE.—Instead of "two or three" there were SEVEN deeds not recorded until long after their date. See the list *ante*.]

"Q. I asked you about the Southey deed. Did you record that?

"A. I do not remember.

"Q. Did you ever record a deed from Emma Taylor immediately after you got it?

"A. *I never recorded deeds in this city. My brother and sister attended to that.*

"Q. After you moved to Washington in 1882 and bought these several properties from Emma Taylor at different times—I believe you have testified that you bought the Barbara Brown property from Emma Taylor, that you bought the Southey property from Emma Taylor, that you bought the Ackerman property from Emma Taylor, and that you bought the Pryor property from Emma Taylor—how did it happen that you did not record the deeds that you got from Emma Taylor until long after you got them?

"A. *My brother and sister attended to that part of the business for me.*

"Q. You never attended to the recording of deeds?

"A. *I never recorded deeds in this city.*

"Q. You left that to him?

"A. I thought my sister, being at the office so often, could attend to that for me.

"Q. How could they record the deed for you if you had it?

"A. *I gave it to them to record it.*

"Q. Either you or he was careless. Which one was it?

"A. I take the blame.

"Q. When you got these deeds did you give them to him to record?

"A. No, sir; I never thought anything about the recording part.

"Q. What did you do with them?

"A. *I put them in the safe-deposit company.* [Let us not forget that she had no safe-deposit box at that time.]

"Q. Then you did not give them to him to record?

"A. Not at that time.

"Q. There are some deeds produced here in evidence since these cases began which were never recorded—

"A. (Interposing.) That was carelessness.

"Q. Whose carelessness?

"A. My carelessness.

"Q. Then you did not give them to him to record?

"A. No, sir; I could not have given them to him to record.

"Q. [Counsel growing more and more nervous.] There are certain deeds which were not recorded at all until after these suits were recorded (*sic*)—certain deeds which you had and produced in evidence here?

"A. Yes, sir; there were several.

"Q. Now you say that you gave your brother those deeds to record and that he did not do it?

"A. No, sir; *I did not do it at all.*

"Q. [Counsel relieved.] You are mistaken about that?

"A. Yes, sir. You know there were other houses besides these. I have other houses besides these.

"Q. [Counsel getting into the mire again.] You took your deeds and *put them in the safe-deposit box?*

"A. Yes, sir."

Now follows a bit of leading interrogation so palpably intended to put words in the witness' mouth and to call to her mind a previous "coaching" that comment is scarcely necessary, except to call the court's attention to the manner in which she echoes the answer prepared by E. A. McIntire and heretofore quoted, viz:

"The delay in recording them was pure carelessness and ignorance on the part of the defendant Martha McIntire, who was under the impression that the recording of deeds was solely to protect the grantee in the event of the loss of the deed, and, as she had the deeds in a vault [safe-deposit box], she felt perfectly safe."

"By Mr. HENKLE:

"Q. What was your idea about recording deeds?

"A. Well, my idea was if I put them in a safe place it was safe enough.

"Q. That is, that the recording of it was only to preserve it?

"A. Yes, sir.

"Q. And if you was sure that you had the deed preserved it was immaterial, according to your idea, whether it was recorded or not?

"A. Yes, sir; I thought my property would be safe.

"Q. Was that the reason you were not particular about that?

"No answer to last question."

This testimony of Martha's was so entirely at variance with the "coaching" that she had received and with her brother's testimony that it necessitated her counsel coming to the rescue; but matters were only made worse, as we shall see, for the woman absolutely knew nothing about the facts and circumstances of these deeds until drawn into the case by her brother's chicanery. Her "coaching" was imperfect, and she, in her ignorance, frequently "jumped the traces." We should not fail also to observe that both Martha and her counsel lose sight of the fact that *all* of these deeds from "Emma Taylor" were alleged to have been executed to Martha over a year—some of them several years—prior to March 3, 1885, that being the date when she (Martha) first obtained her box in the safe-deposit company, so that excusing herself for not recording these deeds because "she had them in a vault," when she did not get the "vault" for years afterwards, will not suffice.

"By Mr. HENKLE:

"Q. Where did you keep your deeds?

"A. I kept them for a while in the safe-deposit company after we got a box there.

"Q. When did you get the box?

"A. At the time of the first inauguration of President Cleveland. I do not know what year that was.

"Mr. EDWIN A. MCINTIRE: 1885.

"WITNESS: Yes; 1885.

"Q. Did you ever give your brother your deeds to keep after you got that box?

"A. I do not remember. I might have for a while. I do not see why I should have given them to him after I once put them in the box.

"A. *As a matter of fact, did you not take your deeds, WHEN YOU GOT THEM, and put them in your box?*

"A. Yes, sir; that is my recollection.

"Q. Did you ever give them to him to record?

"A. *Oh, the record part. I either gave them to him or my sister.*

"Q. Why did they not do it?

"A. *I guess they did when I gave them to him.*

"Q. Some of these deeds have not been recorded. *Did you ever give them to your brother to record?*

"A. *Either to him or my sister.*

"Q. And he failed to record them?

"A. [Remembering this much of her 'coaching.'] No, sir. I do not want to throw the blame on him, for whatever carelessness there was——

"Q. Then why did you not record your deeds?

"A. *I do not know.* It was carelessness and ignorance on my side, I suppose. I do not know what else to call it.

"By Mr. MACKEY:

"Q. You say that when you got the deeds from your brother of these various properties which you bought from Emma Taylor *you took the deeds and put them in the safe-deposit company without recording them?*

"A. *Yes, sir.*

"Q. *You are positive of that?*

"A. *Yes, sir; they were not recorded. That is the way it was.*

"Q. You have bought and sold a good many properties, have you not?

"A. Yes; several.

"Q. Did you not know that it was necessary to record a deed?

"A. Well, I know it now; yes, sir.

"Q. But you never knew it before?

"A. Well, people have to live and learn.

"Q. You had been buying property and loaning money on mortgages and things of that sort, and you never knew until this suit commenced that it was necessary to record a deed?

"A. [Witness beginning to recollect her 'coaching.'] No; you do not understand me. I knew it was necessary, but I did not think it was absolutely necessary, and that if I kept the deed in a safe place it was all right.

"Q. And your brother never said anything about it?

"A. I dare say he thought I had them recorded. I have recorded deeds in Philadelphia. I have been to the recorder's office there.

"Q. You have recorded deeds immediately after you have bought property, have you not?

"A. [Again forgetting her lesson.] *I have not recorded any deeds in this city at all.*

"Q. You had your brother record them?

"A. [Still oblivious.] *My brother or my sister; they attended to my business of that kind.*"

And so it continued for two or three pages more, the poor witness see-sawing from one answer to another as she went from the hands of one counsel into those of the other and showing palpably that she knew nothing of what she was talking about and depended entirely upon her confused recollection of her brother's coaching.

E. A. M'INTIRE AS A NON-MI-RECORDO WITNESS.

The following partial synopsis of McIntire's recollections or, rather, non-recollections of "Emma Taylor" and other important matters in these cases speaks for itself:

"*I have no recollection of her exact residence. I do not think I ever addressed her a note in this city (Rec., 246).*

"*I do not remember collecting any rent for her. I recollect paying her money, but I forget what the money was for, whether for rent or not. I do not remember writing to her in this city (Rec., 247).*

"*I remember writing, but I do not remember the subject of the correspondence. I have no letters from her in regard to this Pryor property. I may have letters of hers in regard to the other properties. [He produced no such letters, however] (Rec., 248).*

"*I have no recollection now whether I have any papers having Emma Taylor's handwriting other than the papers I have produced (viz., three deeds; we produced the other two). I am not positive whether, in making the search for these deeds, I came across any papers having her handwriting (Rec., 249).*

"*I have no distinct recollection how the \$425 borrowed by Mr. Jenison from her through me was paid for, by cash or in check (Rec., 250).*

"*My sister paid Emma Taylor \$2,500 for the Pryor property and the Southey property, but I do not recollect whether*

any price was put upon one and so much for the other. There might have been something said about the separate values, but *I have no recollection* of it now. I could not say positively how the \$2,500 was paid to Emma Taylor, whether by check or in cash (Rec., 261).

"I do not recollect paying it by check, but I do recollect that the payment was made (Rec., 262).

"I do not remember taking the deed of October 14, 1886, from Emma Taylor to Martha McIntire to the recorder's office, and *I cannot state* who got it from the recorder's office (Rec., 262).

"I have nothing whatever to show my payment of \$2,500 to Emma Taylor as consideration for these two pieces of property (Pryor and Southey) except the acknowledgment of the receipt of the money in this deed. Emma Taylor *never told me* where she lived, *to my recollection*. *I have no recollection* in any of these transactions of having occasion to write to Emma Taylor, asking her to call at my office. *I never knew* where she lived (Rec., 263).

"I do not remember how the purchase-money was paid her for the Ackerman, Eller, and Barbara Brown properties recited in the deed of September 6, 1874, whether in cash or by check. *I have not been able*, so far, to find any memoranda in my office which would show whether Emma Taylor paid for the Pryor and Southey properties in cash or by check, and *I do not remember* how my sister Martha gave me money, whether cash or by check, to pay for the Ackerman, Eller, and Brown properties described in the deed of September 6, 1884 (Rec., 264).

"I do not remember the prices that were put upon these three properties by Emma Taylor. *I do not recollect* any conversation which occurred about them with Emma Taylor or Martha McIntire about the price (Rec., 265).

"I do not remember what the reason was for getting a second deed from Emma Taylor to my sister of the Barbara Brown property (Rec., 266).

"I do not remember particularly why \$100 was the consideration price put in the deed of Emma Taylor and Barbara Brown to my sister (Rec., 271).

"I thought Emma Taylor was engaged in one of the departments. I was under that impression all the time, because she used to come down F street after the hour the departments would close, but I never asked her in what de-

partment she was employed. [See testimony of Ames, Government official and compiler of the 'Blue Book.' He says no such person as 'Emma Taylor' was in the Government employ in Washington at that time.] *I have no recollection of writing any letters to her to any of the departments. She has written me letters [which he never produced], but not many. They were not strictly business letters, but I have no distinct recollection of receiving any others. She wrote such a hand as is written by any one who attended the public schools in Philadelphia (Rec., 276).*

"The handwriting of Emma T. McIntire and Emma Taylor is a *little alike*—not much. Emma T. McIntire and Emma Taylor learned to write in Philadelphia. All people of the same school in Philadelphia write the same kind of writing, as all do of the same schools here. I saw her make the signature on the deed of April 25, 1881 (Rec., 277).

"*I am not certain* that there is an erasure in that signature. It might be on the other side of the page or it might have been there before. It appears now in holding the paper up to the light that there is an erasure near the signature. *I do not know anything about it*; although I saw her write the signature, I did not see her make the erasure (Rec., 277).

"*I do not think* she made the erasure while making that signature. *I do not think* the signatures on these deeds are varied. *I do not know* whether I have any specimens of Emma Taylor's signatures besides what we have here [namely, the deeds] (Rec., 278).

"Emma Taylor sold the piece of property to Joseph Forrest, and he gave the check to me as agent for her. I got the money on the check and turned it over to her. *I do not remember* whether I turned it over in cash or gave her my check. *I do not remember* whether in any of these transactions I ever paid Emma Taylor by my check (Rec., 279).

"*I do not know* whether I have any accounts on my books showing whether I paid this Forrest purchase-money to Emma Taylor (Rec., 280).

"*I have no recollection* who collected the rents of the Hayne property while Emma Taylor owned it (Rec., 281).

"*I do not recollect* whether I collected that rent. *I could not say whether* I had anything to do with the collection of the rent of the Ackerman property during the time that Emma Taylor owned it. *I could not say whether* I had anything to do with the collection of the rents or not during

that interval; *I have no recollection. I have no recollection* who attended to the payment of the taxes during that period and looked after the property generally. *I have no recollection* who collected the rents of the Pryor property after [between] the sale to Emma Taylor and the conveyance by her to Martha McIntire. If any rents were collected *I cannot say* by whom they were collected. I mean to say that in any one of these cases, in the interval when the title stood in Emma Taylor, that *I have no recollection* who attended to the property and looked after it, paid the taxes, and collected the rents that were collected, and *I have nothing on my books to show*. My books of that date are destroyed; I mean destroyed by fire (Rec., 282).

[NOTE.—And yet *after* the court had decided “Emma Taylor” to be a myth and McIntire a fraud, and sent these cases to the auditor to state an account for the rents and profits, McIntire, to lessen the amount chargeable against him, brought in and claimed credit for bills of taxes, repairs, &c., paid on these properties by him during this very period when he says Emma Taylor owned them and he had nothing to do with them.]

“I might have told Mr. Forrest, the gentleman who bought the property, that Emma Taylor was a lady residing in Philadelphia, although I said yesterday that my impression was that Emma Taylor was an employé of one of the departments. If I ever told Mr. Forrest so I mentioned it in the same sense that applies to voters who claim residence there and are employed here, or I might have meant that she was in Philadelphia temporarily. *I have no way of refreshing my memory* as to who was the holder of the notes which were given by Alfred Brown to Emma Taylor [for the Hayne property] and paid by him. The notes were not in my possession and were not kept by me for collection during the time that they were maturing.”

[NOTE.—See testimony of Brown where he swears that McIntire kept the notes and he called at his office and paid them to McIntire (Rec., 283).]

“*I have no recollection* whether I recorded the deed for

Emma Taylor or gave it to her to record, which conveyed these properties to her (Rec., 284).

"*I cannot recollect* when I last saw Emma Taylor. *I have no idea* as to the time. *I have no recollection* who besides Emma Taylor bid at the Hayne, Brown, and Pryor sales. These sales were advertised, but I cannot recollect in what papers (Rec., 306).

"I always gave my sister Martha the deeds of her property to record, and never recorded them myself. I would not say always, but that is my impression—that I always did.

"*I have no recollection* who took them off the record—that is to say, who went to the recorder's office and got the deeds."

[NOTE.—See testimony of Wilson and Schayer, deputy recorder and clerk, and the certified copies of the Martha McIntire deeds, showing every one of them was delivered to E. A. McIntire.]

"My recollection is that I gave Emma Taylor her deeds to record, and that I did not record them myself, but *I have no knowledge or recollection* of who got them back from the recorder's office (Rec., 308).

"I mean to say that *I have no recollection* of any of these deeds being delivered to me by the recorder of deeds or by some official in his office. *I have no recollection* of collecting any rents for Emma Taylor of any of these properties—the Hayne, Brown, and the Southey properties (Rec., 309). [See testimony of the tenants, all of whom swear that they paid McIntire the rents during the time he claims 'Emma Taylor' owned these properties.]

"*I have no recollection* of keeping an account for Emma Taylor in that book (his ledger, which he says was burned up). *I do not remember* who paid the taxes of the Forrest property during the time that Emma Taylor owned it (Rec., 310).

"*I have no recollection* about the \$100 consideration in the joint deed of Barbara Brown and Emma Taylor to my sister. *I have no recollection* of any amount being paid. I am under the impression that there was some little change handed to Barbara Brown because she was a very poor woman" (Rec., 313).

MARTHA M'INTIRE NOT A BONA FIDE PURCHASER FOR VALUE.

Let us now examine Martha McIntire's story in regard to her financial resources and her claim to being a *bona fide* purchaser for value. Of course, we cannot undertake in the limited space and time at our disposal to dissect the whole of it; we shall, therefore, only take it up in its most material parts.

She begins by saying that in her youth she was economical and worked first at book-sewing, though she cannot tell how long.

"Q. How long were you engaged in the book business?"

"A. I do not remember how long."

Rec., 115.

Then she says she also engaged in the real-estate business (Rec., 116), and would have us believe that she made a great deal of money at that, but on cross-examination it simmers down to a sale of one house for her father, Edwin T. McIntire (who died in 1876), for which she cannot tell what commission she got.

"Q. What did that bring you; how much? Did you make anything on it?"

"A. I do not remember.

"Q. Well, fifty dollars?"

"A. I made over fifty dollars. I made one hundred dollars, anyhow. He gave me that much, anyhow."

Rec., 116.

Then she sold a house for a Mr. Jacob Smith:

"Q. What did you make on that transaction?"

"A. I did not make quite as much in that transaction."

And she sold some houses for her brother, E. A. McIntire (Rec., 116).

"Q. Did you sell for anybody else?"

"A. I guess that is about all. I had *five or six* houses to sell."

Thus accounting for \$250 or \$300 of the "two or three times two or three thousand dollars" which she claims to have had when she came to Washington in 1882 (Rec., 118), and with which she would have us believe she loaned out on notes—fifteen or twenty thousand dollars, about half of it to a man by the name of Partello.

"Q. That is, at one time Partello owed you as much as ten thousand dollars ?

"A. Yes, sir."

Rec., 122.

And yet her brother, E. A. McIntire, says that since 1879, when Henry McIntire died, she, Martha, has not invested much in notes. "Since his death she has not made very many transactions in notes" (Rec., 223).

But let us not digress. In addition to this \$250 or \$300 accounted for as having been earned in the real-estate business she got money from her father. "He gave me several thousand dollars" (Rec., 118), which she sent on to her brothers to invest for her. Then she is asked whereabouts in Philadelphia she kept this "several thousand dollars" that her father gave her.

"Q. Where did you keep it in Philadelphia—under your pillow or deposited in bank ?

"A. For a little while in a savings fund, until I had an account in bank there. They [the savings bank] paid small interest.

"Q. What savings fund ?

"A. The Philadelphia savings fund.

"Q. That place at the corner of Walnut and 4th streets ?

"A. Seventh and Walnut streets."

Rec., 119.

These, then, are the two places where she kept this "several thousand dollars" before she sent it on to her brother for investment here in notes, viz., the Philadelphia savings fund and another bank of general deposit, which she afterwards names as the Central National Bank of Philadelphia :

"Q. You never had dealings with any other banks?

"A. No, sir.

"Q. Only with the Central national bank and the Philadelphia savings fund?

"A. Yes, sir."

Rec., 120.

Let us look into the savings fund first:

"Q. When did you have money there?

"A. Off and along. You can put in small amounts there, and I put in a little from time to time—that is, when I did not want to keep it in the house.

"Q. What was the highest sum you ever had there?

"A. I think when I drew it out—all of it out—I think about six years ago—I drew out *between three thousand and four thousand dollars*—that is, just little dribblets that I put in. That was the last of it, and I closed up the account then."

Fortunately we sent to Philadelphia and took the deposition of the cashier, Purvis (Rec., 390). He gave the statement of Martha's account with the savings fund from beginning to end (Ex. A. H. No. 57; Rec., 466). By it it appears that the first deposit of \$225 was made June 30, 1874, and the last deposit August 29, 1877. Instead of finding, as from the foregoing testimony we would have a right to expect, a large number of deposits, we actually find that there were made in all these years just *eleven* deposits of comparatively small sums. These are the deposits: \$225, \$100, \$270, \$50, \$60, \$20, \$140, \$110, \$60, \$75, and \$100, a total of \$1,210 in three years and two months.

But this is not all. This balance was allowed to remain in the savings fund without a single draft against it until February 9, 1887, when, with the accumulated interest, it amounted to \$1,824.20, and not between *three or four thousand* dollars, as she swears. Moreover, since the time of the first deposit until it was finally drawn out there had never been taken out a dollar of it until it was all drawn in 1887. It

follows as a natural sequence that *not one dollar* of this money went to pay "Emma Taylor," whose first alleged transaction with Martha was in April, 1881, and the last September 6, 1884.

Now let us take up the only other bank in which she says she deposited her money as she got it when they lived in Philadelphia (Rec., 119). We have the statement of this account direct from the bank (Ex. A. H. No. 53 ; Rec., 464. See testimony of Wm. Post, Rec., 389).

"Statement Showing the Account of Martha McIntire with the Central National Bank of Philada., Pa.

"Account opened in the individual ledger :

" Sept. 5, 1881. By cash	\$500
" May 20, 1882. " "	109
" " " " "	6,210
<hr/>	
" Total	\$6,819 00
 " Payments :	
" July 19, 1882	\$4,925
" Dec. 2, 1882	1,894
<hr/>	
	\$6,819 00

Compare, now, her testimony as to the number and size of her deposits in this bank with the account itself :

"Q. How did you deposit your money in that bank—as you got it, one hundred dollars at a time, or two hundred dollars, or how ?

"A. I put larger sums in the bank.

"Q. How did you deposit these ?

"A. When I got fifty dollars or seventy-five dollars or one hundred dollars or whatever it happened to be, *I then took it there and put it in.*

"Q. How long were you depositing in that bank ?

"A. I do not remember how long ; not a very great while.

"Q. You say that you deposited altogether how much in the Central national bank ?

"A. I did not say how much. I got a letter from them which has been put in evidence here, and I guess that will tell. I think it was about six thousand dollars or sixty-eight hundred dollars.

* * * * *

"Q. How did you get that much money to put in that bank ?

"A. Why, it accumulated from time to time when I got any money on account.

"Q. And you just put it in there?

"A. My father two or three different times gave me one thousand dollars.

"Q. You mean one thousand dollars *each* time?

"A. Yes, sir.

"Q. You would put that in the bank *as you got it*?

"A. Well, I do not really know whether I did or not. I put it there for safe keeping, as I did not want to keep it in the house.

"Q. When your father gave you one thousand dollars you would deposit it in the bank?

"A. Yes, sir; I suppose so. *I did not want the money in the house, and I put it in the bank.*

"Q. And that bank was the Central national bank?

"A. Yes, sir."

Rec., 120.

So, then, this bank account which, as we see, is made up of but three deposits (or rather of only *two*, because two of them were made the same day), she tells us was made up by deposits of a thousand dollars each that her father gave her at two or three *different* times and which she put in this bank *as she got it*! A story palpably false as shown by the account itself. But it is worse than this. The first deposit made in the bank was on September 5, 1881, and *her father died in 1876* (Rec., 304), so she could not possibly have deposited it in this bank *as she got it*, even if we can believe her story that he gave her two or three thousand dollars in that way. That it is a cock-and-bull story is made manifest by Emma T. McIntire's account of it, for she says her father

gave Martha "about *five or six* thousand dollars, I should judge" (Rec., 304)—that is to say, she goes Martha's story and multiplies it two or three times! But let us return to Martha, who made, as we have seen, but *two* deposits in this bank:

"Q. How many deposits did you make in the Central national bank?

"A. I do not know.

"Q. Did you make fifty?

"A. *I do not remember.*

"Q. Give us an idea.

"A. I made several deposits.

"Q. Did you make twenty-five deposits?

"A. *I cannot remember.*

"Q. Cannot you remember whether you made ten deposits?

"A. I suppose I made *more than ten* deposits."

Rec., 120.

[NOTE—As we have seen, she made but *three*.]

Where did Martha get this money? Let us remember that *the whole family moved here permanently* June 15, 1882, and we will require no elaborate argument to convince us that it was the proceeds of some property sold by them the month before they shook the dust of Philadelphia from their feet, but however that may be Martha having sworn that this \$6,819 was made up of sums of one thousand dollars each, deposited at two or three different times and of other sums of "\$50 or \$75 or \$100, just as I got it," and this story being shown to be absolutely false, she attempts another "swear" at it, for be it understood she never in any of her statements confines herself to one version. They are as changing and variegated as the rainbow, and as fading also, we might add.

Her next version is that this \$6,210 consisted of the proceeds of some "one or two bonds—Pennsylvania State bonds. I do not remember how many" (Rec., 131).

"Q. How did you come to deposit that money which you had in Philadelphia—six thousand and odd dollars at one time in Philadelphia?

"A. I sold some bonds there.

* * * * *

"Q. How many bonds did you sell?

"A. *One or two* bonds—Pennsylvania State bonds. I do not remember how many. The time had run out and I sold them.

"Q. Do you remember how many they were?

"A. No, sir.

"Q. Whether one, two, three, or four?

"A. They were several. [She has just said they were one or two.]

"Q. What did they amount to each—one thousand dollars each?

"A. I do not remember. I did not try to remember, because it was all right.

* * * * *

"Q. Now, that deposit, you say, was made in consequence of the sale of bonds—Pennsylvania bonds?

"A. Yes, sir.

"Q. And you got that money and you went to the bank and deposited it?

"A. Yes, sir.

Rec., 131.

* * * * *

"Q. When did you buy those bonds?

"A. *I do not remember.* I had them for some time.

"Q. One, two, or five years?

"A. *I do not remember.*

"Q. You would not swear whether you had them one year or five years?

"A. No, sir; *I could not swear to it.*

Rec., 133.

* * * * *

"Q. Did you have this money with which you bought these bonds—the Pennsylvania State bonds—on deposit anywhere before you bought these bonds?

"A. No, sir; I do not think so, but if I had it anywhere it

was just in the *Savings Fund bank* [another fatal anachronism]; that was all.

"Q. It took about five thousand dollars—somewhere in that neighborhood; it may be a little over five thousand dollars—to buy those Pennsylvania bonds. Now, from so large an item as that you ought certainly to be able to tell us where you got the money with which you bought those bonds.

"A. *I do not remember at all*, because I got money from time to time, as I said before, and had it in the *Savings Fund bank* there [from which we have seen she never drew out a dollar]. Sometimes we kept more money in the house than we ought to have kept.

Rec., 133.

* * * * *

"Q. Now, the long and short of it is that you cannot tell us where in the world you got this five thousand dollars with which you bought those Pennsylvania bonds?

"A. Well, it was money that I had saved up and earned and that had been given me from time to time that I bought those bonds with, and then when I sold the bonds I put the money into the Central national bank.

"Q. It was money that you had saved up and earned and had been given you from time to time?

"A. Yes, sir.

"Q. About how long were you accumulating this \$5,000?

"A. *I do not remember*.

"Q. One, two, or three years?

"A. I suppose two or three years.

* * * * *

"Q. So that in two or three years your savings amounted to five thousand dollars?

"A. I do not know what they amounted to at all.

* * * * *

"Q. And during the two or three years that you were accumulating this money where were you keeping it?

"A. I was keeping it in different places.

* * * * *

"Q. So you do not know how long you were saving it, do you, nor where you were keeping it when you were saving it?

"A. I was keeping it in different places.

"Q. Let us know one place.

"A. One place was in the house and another place in the savings bank in Philadelphia."

Rec., 132.

We have just demonstrated that she drew no money out of the savings bank while she was in Philadelphia, yet we are asked to believe this *fiction* of thousands of dollars being placed there and afterwards drawn out to buy bonds with, but whether a fiction or not can make no difference, for she says that she used this money to buy *notes* with and not real estate, so that she did not use it to pay "Emma Taylor" for any of these properties.

THE FORGERY OF SARAH M'INTIRE'S NAME AND ROBBERY
OF HER ESTATE.

But there was another source from which she claims to have derived money wherewith to purchase these properties from "Emma Taylor." Let us look into that.

Her sister, Sarah J. McIntire, she says, died and left her some money. Sally, we are told, was a school-teacher "who lived economically," and she had quite a sum saved up. They had no administration on her estate, but her mother "just divided up the property among the children." "There were three living after Sally died," and each of them got "several thousand dollars."

"Q. Did this sister have her money in houses?

"A. No, sir; not in houses; just so much money.

"Q. Did she have a deposit in any bank?

"A. She just had money and then bonds; some bonds.

"Q. Did she have money deposited in bank anywhere?

"A. No, sir; I do not think she did; I do not remember that.

"Q. She just kept this money in the house?

"A. Well, she put her money in the savings fund, and she had some in the house when she died and then some bonds."

Rec., 140.

If when Sarah J. McIntire died she had money in the savings fund, of course it could not have been drawn out without an administrator being appointed, so we sent to the bank to find out about it. The testimony of Purvis (Rec., 390) shows conclusively that these people will not hesitate to do for gain what we have charged them with doing in these cases, namely, with *personating parties before acknowledging officers and forging deeds*.

The testimony of the Philadelphia health officer and the undertaker (P. 392, 393) proves that Sarah McIntire died on the 10th day of January in the city of Philadelphia. Purvis, the cashier of the savings bank, gives us an itemized statement of Sarah's deposit account (Ex. A. H. No. 61; Rec., 469). From that account it appears that this school-teacher "who lived economically and had a good situation" had succeeded in scraping together in nine years nine hundred dollars, or *a hundred dollars a year*. This with the accumulated interest increased it to \$1,196.60 on the 2d day of May, 1881, when it was all drawn out, so that, instead of several thousand dollars apiece, these children were entitled to not quite \$400 apiece; but Sarah J. McIntire died January 10, 1881. This money was drawn out, as we have just seen, May 2, 1881, *about four months after her death*. No administrator was appointed of her estate. How was it drawn out? Now, observe the *fraud, forgery, and personation* to which E. A. McIntire will resort for a little money. This bank account was drawn out *upon a power of attorney to Martha McIntire and in E. A. McIntire's handwriting, dated May 2, 1881, and purporting to be signed by Sarah J. McIntire and acknowledged in Washington, 1881, before Christopher Edie, notary public*. (See the photographic exhibit, A. H. No. 62, Pryor case.)

As Sarah J. McIntire had been dead and buried in Philadelphia for four months, who forged her name and personated her before Christopher Edie, of Washington city, if not E. A. McIntire? The Court of Appeals, referring to this

power of attorney, said in its opinion (Rec., —) it was convincing evidence of the capacity of these people to forge and personate.

It is also claimed that she and her sister Emma received a large sum of money from the estate of their sister Addie or Adelaide—some three or four thousand dollars apiece. Addie died in 1885 (Rec., 141), and yet we are asked to believe the money derived from her estate went to pay "Emma Taylor," who, according to McIntire's own statement, disappeared in 1884 (Rec., 213) and whose last conveyance is dated September 5, 1884; but, even should time turn backward in its flight, it would do them no good, for what does Martha say about Addie's estate on cross-examination?

"Q. How much did you get from her estate?

"A. *I do not remember that, either.*"

Rec., 140.

Her counsel then comes to the rescue with a thoroughly leading and suggestive question:

"Q. Did you get as much as three thousand dollars or four thousand dollars from her estate?

"A. *I think I did.* It was divided between my other sister [Emma] and me. She left it to both of us."

Rec., 141.

This would have made Adelaide's estate amount to six or eight thousand dollars, but we show by the petition of E. A. McIntire for administration on Addie's estate (Rec., 516) that it amounted to only \$2,700, which would give them only \$1,400 apiece, providing none of it stuck to E. A. McIntire's fingers during the administration; but whatever it amounted to is immaterial, for, as we have seen, Adelaide died *long after* the last conveyance of "Emma Taylor" to Martha; consequently no money of hers could have gone into "Emma Taylor's" pockets.

There are still left, however, *three* other sources, for this

woman is almost as fertile in resources as the fabled hydra was of heads, one of which was no sooner chopped off than two sprang in its place. Martha's alleged remaining resources are the safety-deposit boxes, money kept at home, and the Second national bank of this city.

"Q. You had money, then, on deposit in the Second national bank to the credit of your sister. You had money in both the safe-deposit companies and you had money at home, did you?"

"A. Yes."

Rec., 172.

Her sister Emma gives the best account of the safe-deposit boxes; let us turn to it:

"Q. Was this safe-deposit box rented jointly by your sister and yourself?"

"A. Yes, sir.

"Q. You did not have separate boxes, then?"

"A. No, sir.

"Q. Where was this safe-deposit bank that you rented the box in?"

"A. Fifteenth and New York avenue and on Pennsylvania avenue.

"Q. You rented first a box in the safe-deposit company at Fifteenth and New York avenue, as I understand, some time in 1885?"

"A. *About the 3d or 4th of March, 1885.*

"Q. And subsequently you gave up that box and took another box jointly in the safe-deposit company on Pennsylvania avenue?"

"A. Between Ninth and Tenth streets.

"Q. That is the Washington Safe Deposit Company?"

"A. I think so.

"Q. Prior to that time she had been depositing her money in the bank with you?"

"A. Yes, sir."

Rec., 326.

Two dates here are important to be remembered: First, that the *last* alleged purchase from Emma Taylor by Martha

McIntire was *September 6, 1884* (the Ackerman and Eller properties); and, second, that Martha did not get her safe-deposit box until *March 3d or 4th, 1885*. Consequently, the money which went to pay Emma Taylor for any of these properties *was never kept in the safe-deposit boxes*. Having shown the fiction of these boxes, let us proceed to the money which she had at home. To dispose of this claim we must summon her sister, Emma T. McIntire, again. She says:

"Mr. HENKLE:

"Q. Mr. McIntire suggests to me to ask you whether she [Martha] had also kept money at home about the house.

"A. Not much.

"Cross-examination:

"Q. What do you mean by 'not much'?

"A. Just enough to pay her immediate debts.

"Q. Thirty or forty dollars?

"A. *Oh, not that much.*"

Rec., 326.

Then a few moments afterwards she explains this answer to mean when Martha was *in Washington* and not when she was in Philadelphia.

"Q. Then, when you made that answer you were limited to the time since she came to Washington?

"A. Yes, sir."

Rec., 332.

Martha moved to Washington June 15, 1882. She says she bought from Emma Taylor the Pryor and Southey properties May 31, 1884, and the Brown, Eller, and Ackerman properties September 6, 1884, and as, according to her sister, Emma T. McIntire, she never kept as much as thirty or forty dollars at home "while she was in Washington," consequently that source is excluded.

We have now brought her to the last remaining source; we have followed up all the others and shown the complete

falsity of her pretensions. We have shown that she kept no money at home during the time of these alleged purchases. We have shown that her savings-fund deposit, trivial as it was, did not come into her hands until 1887. We have shown that her share of Sarah McIntire's money from the same savings fund could not have reached \$400, notwithstanding the forgery and false personation it took to get it. We have shown that the safe-deposit box and Addie's little legacy were likewise too late to avail her, and we have shown that the money which was drawn from the Central Bank of Philadelphia did not by her own admission go to "Emma Taylor," but to purchase Partello's notes, even if we can be brought to believe that the money was actually hers, since she has told three or four thoroughly irreconcilable stories as to how she got it.

Her last source is, as we have seen, the Second national bank. She testifies, it will be remembered, that she paid "Emma Taylor" \$2,500 for the Pryor and Southey properties, on May 31, 1884, giving the money to her brother "in cash."

"Q. Where did you get that twenty-five hundred dollars to pay him?

"A. It was my own money that I had received from time to time as I told you before, as you will remember.

"Q. Where had you been keeping the money before you gave it to your brother?

"A. I had a box in the safe-deposit company for a long time. I kept money in there for some time.

"Q. You kept this money in a box in the safe deposit?

"A. Yes, sir; *that is where I kept the money.*"

P., 126.

Then, afterwards, she says she doesn't know whether she kept it there or not; and pressed again to tell where she got it, she says:

"A. *I cannot remember.* It may be that he had it in bank.

"Q. But you have just said that you paid it to him in cash, did you not?

"A. Well, if he had money in bank for me, of course I could tell him to take it out and pay the cash.

"Q. All your money, then, was kept in his bank, was it?

"A. Yes, sir; as trustee for me."

P., 126.

Now, E. A. McIntire says:

"Q. You kept no bank account for her [Martha] after she came to Washington?

"A. No, sir."

P., 274.

So that her brother did not get it out of any bank for her, and we bring her back again to the one remaining place to get it from, viz., the Second national bank.

"Q. Did she [her sister Emma] have a bank account?

"A. She had a bank account, and I put my money in her bank.

"Q. Did you draw that twenty-five hundred dollars out of her bank?

"A. *I do not remember where I got it from at that particular time.*"

Rec., 127.

Now, Emma T. McIntire is cross-examined:

"Q. Did you keep any account of the moneys that you had in the bank there for your sister?

"A. I kept it in conjunction with mine.

"Q. Did you have any other way of ascertaining except from your memory?

"A. Her memory and my memory.

"Q. You never would keep it in a book or on paper of any sort?

"A. *I trusted my memory.*

"Q. Do you remember the circumstance of her paying for this Pryor property?

"A. I have an indistinct remembrance.

"Q. *Do you remember how much it was she paid?*

"A. No.

"Q. Did she ask you to get twenty-five hundred dollars out of the bank for her?

"A. *I do not remember.* I have gotten about that amount for her.

"Q. How long ago?

"A. *I do not know now. I cannot remember.*

"Q. Well, can you remember that about in 1884 she asked you to get twenty-five hundred dollars out of the bank for her—that is, about the date of the sales of the Pryor and Southey properties, when she bought?

"A. *I do not recollect that amount now.* I might have done it, but I do not trust to my memory after it is done."

Now, we struggled hard to get this bank account. We called upon them to produce it and they *refused* point-blank to do it. We then, under a *subpœna duces tecum*, put the cashier, Eckloff, on the stand and was about to have him produce the book for the purpose of showing the account to be almost as trivial as the savings-fund affair, but we were blocked by the defendant's objections (Rec., 341) under the pretence that it was Emma T. McIntire's private account, although she herself has stated it to consist of the joint moneys of herself and sister, and therefore as much Martha's account as hers. The matter was taken to the court on motion and came up before Mr. Justice Bradley, who in an opinion, though thoroughly erroneous as matter of law, held that it was Emma T. McIntire's account and not Martha's, and was therefore *res inter alios acta*. But the important point in his honor's decision was that he held, as contended by defendant's counsel, that neither Martha nor Emma claimed that the \$2,500 which they assert was paid for the Prior and Southey properties was obtained *from the money in this bank*. We quote:

"Had these witnesses, the defendant Martha McIntire and her sister Emma, both stated that this sum of \$2,500 was taken from the bank account for the purpose of being applied to this purchase, it might present a different question" (Rec., 343).

Therefore, having obtained a ruling of the court refusing to allow us to go into this bank account on the express grounds *that it was not claimed that any of the money from that bank was used to pay for these properties*, Martha is now estopped to claim before this court that the money came from that source.

In concluding this inquiry as to Martha McIntire's financial resources, we submit that even should we for the moment concede that "Emma Taylor" is not a fiction, yet the defense has completely failed to show Martha a purchaser for value. Although the burden of proof is on her to show this, we have again assumed the burden and proved a negative; but if it be true that "Emma Taylor" is a fiction, then it matters not, as we have said, whether Martha was the possessor of millions, for she could not have paid money to a fiction.

RECOLLECTIONS (?) OF MARTHA M'INTIRE AS TO HER FINANCIAL RESOURCES, ETC., BEING EXTRACTS FROM HER TESTIMONY AS IT APPEARS IN THE RECORD.

"I moved to Washington on the 15th of June, 1882 (Rec., 115). When I lived in Philadelphia with my family I did not pay any board. I was favored, and that is the way I got a *little* ahead. *I do not remember* how much I had saved by 1882. I certainly saved \$1,000 or I would have been a poor woman if I did not. *Cannot remember* whether I saved \$1,500 or \$2,000 or \$2,500. *I could not tell* you if I had to die for it how much money I had when I came from Philadelphia to Washington in 1882. *I do not remember* how much more than \$2,000 I had (Rec., 117.)

"*I do not know* how much real estate I had in Washington after I came on here (Rec., 123).

"I know that I did not have a dozen houses. I know that I had one house, but *I cannot tell* what house it was. I would have to look up the papers to tell you. I gave my brother \$2,500 in cash to pay for the Southey and Pryor properties (Rec., 125). I had it in a safe-deposit company" (Rec., 126).

[NOTE.—She did not hire the safe-deposit box until March, 1885, and this property was paid for in October, 1884.]

"I cannot remember where I got the \$2,500. It may be that I had it in bank. I do not remember where I got it from, but I know I paid it in cash, in a lump sum and not in driblets. I cannot remember whether I paid it to him at his house or at his office. It may be that my sister took it to him. I never bought any property from Emma Taylor before I came to Washington. I think they were all bought afterwards" (Rec., 127).

[NOTE.—The "Barbara Brown and Emma Taylor" deed is dated in 1881, before she came to Washington.]

"I cannot tell what I gave Barbara Brown and Emma Taylor for the property. If you will allow me to look at my memorandum, I probably can tell. After I came to Washington I took charge of my deeds. I put them in a safe-deposit company."

[NOTE.—Every one of these properties was bought before she got the safe-deposit box.]

"I gave money to my sister to deposit in the Second national bank for me, where she had her account, nearly a hundred times" (Rec., 129).

[NOTE.—This is the account which she refused to let us see.]

"I never cared about giving her \$1,000 at one time to deposit for me. I do not remember how many times I gave her \$1,000 to deposit. I cannot remember whether I gave it to her once or half a dozen times" (Rec., 130).

"I had six thousand and odd dollars at one time deposited in the Second national bank in Philadelphia. I got it by selling some bonds—Pennsylvania State bonds. I do not remember how many there were. I do not remember what they amounted to each. I do not remember what I made off of them when I sold them. I do not remember whether I made \$1,000 or not" (Rec., 131).

"*I do not remember when I bought the bonds. I do not remember how long I had them—one, two, or five years. I could not swear whether I had them one year or five years or ten years. I think I bought them all at once. I do not remember where I had the money on deposit to buy those bonds. If I had it anywhere, I had it in the Savings Fund bank*" (Rec., 132).

[NOTE.—She never had but \$1,200 in the Savings Fund bank, and that deposit began in 1872, and was not drawn out till 1887, so that she could not possibly have bought them with money she had there.]

"*I do not remember how long I was in accumulating this \$5,000. I suppose it was two or three years* (Rec., 133).

"*While I was saving it I was keeping it in different places. One place was in the house and another place was in the savings bank.*

"*I guess there were not any other places. I do not think I kept as much as \$1,000 in the house. I do not remember where I kept it in the house* (Rec., 134).

"*When I bought these Southey and Pryor properties from Emma Taylor I bought several houses from her* (Rec., 135).

"*I do not remember what I gave her for these other houses. I do not remember whether it was three or four—I think it was four houses—I bought from her afterwards.*"

[NOTE.—There were only *two*, the Ackerman and Eller properties, which were bought in September, 1884, by the same deed.]

"*It was so much for each piece of property, but I do not remember how much for each piece. I paid \$2,500 for the Southey and Pryor properties, but I do not know how much for the others, nor do I know how much I gave for a single piece of them* (Rec., 136).

"*I have no data, no memoranda, no notes, no old checks, no old bank books, nor anything of that sort which will show that I had any money on deposit anywhere when I had any of these financial transactions. I had some, but they were destroyed.*

"I only saw Emma Taylor once. It was in the office of my brother, Edwin A. McIntire. *I do not remember* when it was that I saw her (Rec., 137).

"*I do not remember* whether it was 1, 2, 3, 4, or 5 years ago that I met her; it was several years ago. *I do not remember* actually whether it was *since* we moved to Washington or *before*."

[NOTE.—At the time of testifying she had been living in Washington *ten* years.]

"*I do not remember* whether it was before or after I bought the properties from her. When I was introduced to her I did not think, and I really did not know, whether I bought the property from her or not" (Rec., 138).

THE FORGERIES AS AFFECTING CREDIBILITY.

If the court believes from the evidence that these deeds, or any of them, are forgeries, then all other questions sink into insignificance as compared with that fact. The defendants have offered them as genuine. They have testified in so positive a manner in regard to them that if they are forgeries the McIntires stand convicted of the grossest and most willful and deliberate perjury. Upon what ground, then, can they ask that their uncorroborated testimony upon any disputed matters shall be received and acted upon by the court? Surely, as we have already shown, judicial evidence is not to be mocked at by accepting the statement of such persons. And yet, as there will be found in the record an opinion of Mr. Justice Hagner (whose conclusions the Court of Appeals differed with), we deem it our duty to our client to respectfully criticise that opinion for some of its remarkable propositions in order that they may not stand unchallenged before this court, for that learned judge not only accepted the uncorroborated assertions of the McIntires, but ranked their testimony as on an equality with that of any of the most credible witnesses in the case. "Of course," said he in the

opinion referred to (Rec., 495), "there exists the practice to impeach the witness by contradicting his statements and showing that what he testified was at variance with what other witnesses had said on the same subject, but it remains that what those other witnesses said *is also at variance with what the McIntires have testified.*" That is to say that the McIntires are as credible as the witnesses who contradict them. We are the less surprised at this language, however, when we observe that, so far as the court's opinion discloses, no notice whatever is taken of the innate evidences of forgery in the "Emma Taylor" and Ackerman deeds, or of the self-contradictions of the McIntires themselves, or of the absence of any of that evidence which would be abundant if "Emma Taylor" had been the real purchaser of these properties, such as evidence of her handwriting other than her alleged signatures, evidence of accounts kept with her, evidence of persons who had seen her during the time when she was executing these deeds, evidence of some expert in handwriting to explain away the palpable dissimilarity of these signatures and at the same time their curious likeness in certain features to the signatures of Emma T. McIntire, nor is any notice taken of the suspicious character of the erasures and interlineations and the equally suspicious explanations of them by E. A. McIntire; nor is anything said of the proved fact that the Sarah McIntire power of attorney was signed and acknowledged four months after her death; nor of the Barbara Brown and Emma Taylor joint deed to Martha McIntire, although we have shown from the face of the deed itself that it is a palpable forgery. Not one word of criticism or comment upon these and numerous other self-evident facts utterly inconsistent with the testimony of the McIntires is to be found in either of the two elaborately written opinions of Mr. Justice Hagner who first heard these cases, but instead thereof we are silenced with a brief paragraph that if the witnesses contradict the McIntires the McIntires contradict the witnesses—in other words,

that it is six of one and half a dozen of the other. We submit with all respect that this is not the recognized method of weighing the testimony of witnesses. Something is due to the evidence of our own senses. Merely because a witness says this or that does not establish this or that as a fact if there are other known facts and circumstances incompatible with the existence of the fact alleged. Take, for example, the alleged fact that there was a foreclosure sale of the Brown and Hayne properties, and putting aside for the moment the testimony of the numerous witnesses from the immediate neighborhood (some of whom resided at the time in the property itself) that no such sale took place or could have taken place without their knowing of it or at least hearing of it, and dealing solely with the known fact that the McIntires are unable to produce a single person other than themselves who will swear that they saw the sale take place; that no advertisement of these sales is produced, and that an examination of the daily papers that date shows none; that the auctioneer's sales book shows no such sale; that a forged bill of the auctioneer is attempted to be foisted on the court as genuine; that the person who is alleged to have bought the properties is not produced or anything showing that she had dealings with the trustee, except her alleged signatures to deeds which competent experts pronounce forgeries and which themselves are so dissimilar as to arouse suspicion and suggest fraud; that no checks, receipts, or accounts of any sort are produced to substantiate the naked assertion that extensive dealings were had with her by the trustee; that the deeds alleged to have been executed by her were kept off the record for years; that the alleged purchaser from this mythical personage is the trustee's own sister; that the sister is unable to produce the slightest written data showing a payment for the properties; that she completely fails to satisfactorily explain where she got the money to pay for them; that the production of the most important of her alleged book accounts

is refused; that both the direct and cross examination of herself and brother have evolved numerous contradictions and inconsistencies in regard to the facts as alleged by them—all these matters, to say nothing of others which time does not permit us to enumerate, form a chain of circumstances utterly incompatible with the existence of these alleged foreclosure sales. If, then, no such sales occurred, what is to be said of these McIntires, who testify that they did occur? Is it to outweigh or even balance the testimony of the numerous witnesses to the fact that they did not occur? Is it to outweigh the testimony and the innate evidence going to show that the "Emma Taylor" deeds are forged? Surely not if the accepted rules of evidence are to be enforced.

THE BURDEN OF PROOF.

It is well settled that when a party claims the property of another under a deed of conveyance and it is charged that the party so claiming obtained it fraudulently and without the payment of any consideration therefor he must, when the circumstances are such as to throw suspicion upon the transaction, show *clearly* and satisfactorily how he bought and paid for the property, where the purchase-money came from, etc.

Clements *vs.* Moore, 6 Wall., 299, at p. 315.

Piddock *vs.* Brown, 3 Peere Williams, 289.

Wharton *vs.* May, 5 Vesey, 49.

Surrounded, therefore, as these transactions are with suspicious circumstances piled "Pelion upon Ossa," the burden is thrown upon Martha McIntire to clearly and satisfactorily show how and where she got the money to pay for these properties and how and where and when she paid for them. This, we have seen, she has not done. She cannot, therefore, claim as a purchaser for value.

HOW IS A WITNESS' CREDIT TO BE IMPEACHED?

The criticism of Mr. Justice Hagner upon our method of impeaching the credit of the McIntires and as to what would have been the proper method is, we submit, utterly untenable. We quote the language of his honor as found on page 495 of the Record :

" With respect to the attempt to impeach their [the McIntires'] testimony, it is observable that no witness is brought from the large population of this District to testify that either is unworthy of belief, *and that they would not credit them on their oath*, although this is the *most usual* and, perhaps, *fairest* way of impeaching a witness."

Mr. Greenleaf in his work on evidence (vol. 1, sec. 461) lays down the modes as well as the order in which a witness may be impeached :

1st. Exhibiting the improbabilities of his story by a cross-examination.

2d. By disproving the facts stated by him by the testimony of other witnesses.

3d. By general evidence affecting his credit for veracity.

Mr. Justice Hagner intimates, as will be seen from his quoted language, that this *last* method given by Mr. Greenleaf should really be the first. He also says it is *the most usual* and the *fairest*. With all due respect, we submit it is the most unusual and the unfairest. Probably in not one civil case in a hundred where the veracity of a witness is impeached is the method which Mr. Justice Hagner here suggests resorted to. Indeed, it may be said to be very unusual to do so at all except in criminal cases, where a man's life or liberty is at stake. Moreover, Mr. Greenleaf, referring to this method of having other witnesses testify "that they would not credit the witness on his oath," says in the same section above cited, "Its propriety has of late been questioned, and perhaps the weight of authority is now *against*

permitting the witness to testify as to his own opinion;" so that we resorted to the way most approved of by Mr. Greenleaf, viz., showing the improbability of the story by cross-examination and by contradicting the McIntires by other witnesses, and yet we are criticised by his honor for not adopting a method disapproved of, as Mr. Greenleaf says, "by the weight of authority."

KNOWLEDGE OF THE AGENT IS KNOWLEDGE OF THE
PRINCIPAL.

Martha McIntire cannot claim as a purchaser without notice of her brother's fraud, for she and he both repeatedly testify that he was her agent in all these transactions, and it is well settled that the knowledge of the agent is the knowledge of the principal.

"A principal in a transaction is chargeable with notice of matters affecting its validity coming to the knowledge of his agent pending the proceedings."

Johnson *vs.* Laffin, 103 U. S., 800.

And the rule that notice to the agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in an *antecedent* transaction, and present to his mind at the time he is acting as such agent.

Harrington *vs.* United States, 11 Wall., 356; and see
to same effect Aston *vs.* Wells, 4 Wheat., 466.

Pomeroy, in his Equity Jurisprudence, says on this subject:

"The general rule is fully established that notice to an agent in the business or employment which he is carrying on for his principal is a constructive notice to the principal himself, so far as the latter's rights and liabilities are involved in or affected by the transaction" (Pomeroy Eq. Jur., sec. 666).

" Whenever the knowledge of the agent is actual—that is, whenever he has obtained the actual information of certain facts, and has therefore received actual notice—his imputation of knowledge to the principal is evident and reasonable. Whenever the agent's knowledge of certain facts exists only in contemplation of law—that is, when he has received a constructive notice—the imputation thereof to the principal is no less reasonable and clear. If under any circumstances a party, while dealing for himself, must be trusted in contemplation of law as one who has acquired certain information, and must be charged with constructive notice thereby, the same result must follow when under like circumstances the party is dealing by means of an agent " (Pom. Eq. Jur., sec. 676).

Therefore had Martha even paid the money over to her agent, E. A. McIntire, for these properties she could not hold them as against the complainants when it is shown that E. A. McIntire obtained them fraudulently—that is to say, E. A. McIntire and Martha McIntire are, for the purposes of administering the law of these cases, *one* person, and that person is E. A. McIntire. If we show that *he* has defrauded us, then Martha McIntire has also, although (were it possible to conceive it in view of the testimony) she herself had been actually deceived and defrauded by him.

REPLY TO APPELLEE'S OBJECTION TO THE COMPARISON OF
ADMITTED SIGNATURES TO CERTAIN PAPERS FROM THE
ORPHANS' COURT WITH THE ALLEGED FORGED SIGNATURES.

The originals of the papers above referred to are before this court. The signatures are *admitted* to be genuine (Rec., 323; also by E. A. McIntire at p. 287). Nevertheless the learned counsel for the appellee objects to any comparison being made of them with the alleged forged signatures because, as he claims, they are not properly in evidence for any purpose.

In this the learned counsel is clearly mistaken, as the

record will show. Thus the signature of Emma T. McIntire is found affixed to the Medford & Waldron contract (Ex. A. H. No. 18, Rec., 441). The signature was compared by Mr. Hay, the expert, with the "Emma Taylor" signatures, and the opinion given that it was written by the same person (Rec., 785). The paper was offered in evidence *by the defendants themselves*, for the express purpose of proving the contract.

So the signature of Emma T. McIntire to the petition filed in the orphans' court August 5, 1885, and printed on pages 522, 523 of the Record, is properly in evidence for the purpose of contradicting Emma T. McIntire, who had testified to having a considerable bank account about that time made up of moneys, deposits by herself and sister Martha. This petition shows that at that very time they were representing to the orphans' court that they were "much in need" of money. Emma T. McIntire was handed this petition and asked if she signed it, which she admitted (Rec., 322). So the petition (Rec., 521) filed in the orphans' court March 5, 1886, is properly in evidence to show the date of the death of David McIntire; and the petition (Rec., 516, 517) filed in the orphans' court November 20, 1885, and December 11, 1885, respectively, are relevant to show the date of the death of Adaline McIntire, from whose estate Martha claims to have received a large sum of money, which she says she used in purchasing the properties in controversy. The petition shows that Adaline died July 21, 1885, *long after* these properties were bought, and therefore that whatever moneys were derived by Martha McIntire from her sister Adaline's estate could not possibly have gone into these properties. Moreover, it directly contradicts the statement of the McIntires that she left an estate of large proportions. The sworn statement of E. A. McIntire to the petition puts her estate at but \$2,700, while her distributees were *seven* persons, yet Martha and her brother claim that, as one of these seven distributees, she received between three and four thousand

dollars! (See *ante* this brief, p. 55.) Certainly this paper under the defendant's own signature is competent to contradict this testimony and to impeach their credibility.

Again, as to the so-called "card" signatures. These, it will be remembered, are certain signatures which E. A. McIntire testifies were "prepared" (Rec., 219) to deceive and "entrap" the witness Mrs. Annie Galliher, who had testified that she knew Emma T. McIntire's signature. For the purpose of breaking down her testimony she was shown these cards which both he and Emma McIntire swear were not written by the latter, and she was asked if they were the signatures of Emma T. McIntire, to which Mrs. Galliher replied they were, thus, the defendants contend, showing that she did not know Emma T. McIntire's signature when she saw it. The extent and accuracy of Mrs. Galliher's knowledge of Emma T. McIntire's signature is an important issue in these cases, for she testifies (Rec., 66) that the "Emma Taylor" signature to the Forrest deed is in the handwriting of Emma T. McIntire. If, therefore, the defendants testify *truthfully* that these card signatures were not written by Emma T. McIntire, then Mrs. Galliher's qualification as a judge of the latter's handwriting has been successfully attacked; on the other hand, if they have testified untruthfully about it, and Emma T. McIntire *did* write them, then the whole case of the defence is broken down, for they must stand convicted of the grossest perjury in a matter about which they could not be mistaken. Now, the experts McLellan (Rec., 87) and Hay (Rec., 783) both swear that, comparing these card signatures with the signature to the Medford contract (offered in evidence by the defendants themselves), as well as with the admitted signatures from the orphans' court, they are of the opinion that these card signatures were written by Emma T. McIntire, and we apprehend this court will be of the same opinion after making a similar comparison. So that these card signatures are made relevant testimony in the case by the testi-

mony of E. A. McIntire, who uses them as a means in his attempt to break down Mrs. Galliher's testimony.

Moreover, it is to be remembered that they are admitted to *resemble* Emma T. McIntire's signature (Rec., 287); so that these card signatures, and unquestionably the signature to the Medford & Waldron contract and those to the orphans' court papers which we have pointed out, are completely within the ruling of this court that papers containing signatures must be relevant and admissible for some other purpose than the mere proof of handwriting.

It has already been observed that these signatures, except the card signatures, are admitted to be genuine. This court has never passed upon the question whether a signature admitted to be genuine can be used for comparison with disputed signatures, although the paper containing the signature may not itself be relevant evidence for other purposes, and it is respectfully submitted that whenever such a case is presented this court will not decide that an admittedly genuine signature cannot be compared with a disputed one for the purpose of determining the genuineness of the latter.

But, after all, the cases of these complainants, as has already been said, does not rest upon the fact whether or not Emma T. McIntire wrote the "Emma Taylor" signatures. The question is, are the "Emma Taylor" signatures genuine, not *who* forged them. The complainants believe that Emma T. McIntire wrote them; but even if they are mistaken as to that, it does not follow that they are not forged. Strike out all the Emma T. McIntire signatures in the case, and the innate evidence of the "Emma Taylor" signatures themselves shows them to be forged, to say nothing of the mass of testimony going to show that she is a mere fiction.

II.

THE PHOTOGRAPHS.

The photographic exhibits are also attacked as inadmissible. It is said that they are but *copies*. It is to be observed that this is not a case where the photographic copy is the *only* evidence of the handwriting. The *originals* are also produced. The purpose of the photographs is simply to aid the court in its examination of the originals, just as the magnifying glass may unquestionably be used. The court can call to its aid every *natural* agency for the purpose of comparing these originals with each other, and photography is nothing more than the application of the powers of nature to the reproduction of originals.

The use of enlarged photographic copies of handwriting already in evidence is well explained in *Maury v. Barnes* (16 Gray, 160), where the court said :

"They (the photographic copies) were capable of affording some aid in comparing and examining the different specimens of handwriting which were exhibited on trial. *It is not dissimilar to the examination with a magnifying glass.* Proportions are so enlarged thereby to the vision that faint lines and marks as well as the genuine characteristics of handwriting, which perhaps could not otherwise be clearly discerned and appreciated, are thus disclosed to observation, and afford additional and useful means of making comparisons between admitted signatures and one which is alleged to be only an imitation."

In *Luca v. United States* (23 How., 515), decided in 1860, this court resorted to the use of photographic copies for the purpose of comparison of handwriting, and a grant of land in California purporting to have been made to one José de la Rosa and purporting to be signed by Pio Piso, as acting governor, and countersigned by his secretary, was on the

faith of these photographs adjudged to be false and forged. The court, by Mr. Justice Grier, said :

"Many excellent judges have carefully scrutinized and compared these signatures, and declare the signatures in question are forgeries. Two of them express the opinion that the person who wrote the instruments made the signatures also."

"*We have ourselves been able to compare these signatures by means of photographic copies, and fully concur (from evidence 'oculis subjecta fidelibus')* that the seal and the signatures of Piso on this instrument are forgeries."

STATEMENT OF THE SPECIAL FACTS IN MARY PRYOR'S CASE
AND ARGUMENT THEREON.

If, by the foregoing, we have established the charge that "Emma Taylor" is a fiction, and that the McIntires are unworthy of belief, we have lightened considerably the task before us, to wit, that of showing that the decree of the Court of Appeals in the Pryor case should be affirmed.

What is Mary Pryor's case?

The material averments of the amended bill are that the complainant, being the owner of parts of lots 21 and 22, in square 569, of this city, executed on the 2d of May, 1880, a deed of trust thereon to E. A. McIntire to secure Hartwell Jenison \$450, said indebtedness being represented by the joint and several promissory note of the complainant and her husband, Thomas Pryor (the deed of trust is made part of the bill and shows the note to have been payable in one year from the date of the trust); that during the latter part of the month of May, 1881, the note being overdue and unpaid, said McIntire represented to the complainant and her husband, both of them being unlettered colored persons and ignorant of business and legal matters, that he was compelled to sell the property under the deed of trust, but that it was not his intention to disturb the complainant in her ownership thereof; that the sale would be

a mere matter of form, and suggested to complainant's husband that he should buy the property at the same, and time would be allowed him to pay said indebtedness; that accordingly, on the 17th of June, 1881, the property was exposed to public sale at auction, and complainant's husband, as complainant and her husband *supposed*, became the purchaser thereof for the sum of \$700; that after said sale said McIntire did not for some time disturb complainant and her husband in their possession of said property, but represented to them that they might pay him rent therefor and he would apply it upon the indebtedness due, and that complainant's husband did accordingly pay him rent at the rate of six dollars a month, with the understanding, however, that said sum should be applied to the liquidation of the \$450 note, and when the sum was paid the property would be reconveyed to the complainant.

"That complainant has only recently discovered that said sale was made by the said trustee, McIntire, *really in his own interest and with the intent to obtain for himself by fraudulent representations to complainant, her late husband, and the said Jenison the title to the said property*; that in pursuance of said fraudulent intent the said McIntire, on the day after said sale, to wit, on the 28th day of June, 1881, executed as trustee a deed of said real estate to said Jenison for a pretended consideration of \$806, but kept the same from record, unknown to the said Jenison, for a period of nearly ten months."

That on or about the day after executing said deed to Jenison said McIntire pretended to him that in order to pay the taxes in arrear and expenses of sale the sum of \$425 would be required, and accordingly procured the authority of Jenison to borrow that sum upon his (Jenison's) promissory note secured by deed of trust upon said property; that thereupon, at McIntire's instance, Jenison executed his promissory note for \$425, payable in one year, to one *Emma Taylor* and joined with his wife in securing the same by a

deed of trust to said McIntire upon said property; that thereafter—that is to say, on or about the 19th day of April, 1882—the said McIntire, pretending to said Jenison that a purchaser for said property for more than the incumbrance upon it due to said Emma Taylor could not be found, induced the said Jenison to execute a deed in fee of said property to said *Emma Taylor* for the amount of the incumbrance thereon, to wit, \$425.

That about six years afterwards said McIntire induced said Jenison, by representing that the same was necessary, to execute a deed of quitclaim to said *Emma Taylor* of said property, dated September 27, 1887; that the only purport of said quitclaim was to pass to said Taylor the right to any drawbacks upon special taxes theretofore assessed upon said property, but complainant is informed and believes, and so avers, that the true purport of said deed was not explained to said Jenison, and that he executed the same only because it was asked of him by said McIntire.

That complainant is informed and believes that said Emma Taylor was and is an altogether fictitious person, created by said McIntire for the purpose of carrying out his fraudulent scheme of obtaining possession of said property for himself; that the said \$425 note and the deed of trust to secure the same were all fictions manufactured by said McIntire to the same end; that the money used by said McIntire to pay said taxes and expenses was much less than \$425 and was paid out of his own funds; that the deed in fee of said property to Emma Taylor was but a cloak to cover up the fraud of said McIntire in obtaining complainant's property, and the said quitclaim was for the same purpose, and complainant is advised by counsel, and so avers, that the said Emma Taylor being a fictitious person, the deeds executed to her and in her name were void, and that no title passed thereby. That all of the foregoing facts have only been discovered by the complainant within the last few months.

That thereafter, on the 31st day of May, 1884, said Mc-

Intire "executed or caused to be executed a deed in the name of the aforesaid fictitious person, Emma Taylor, to his sister, Martha McIntire;" that said Martha paid no consideration therefor, "and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to further cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real, though not apparent, owner of said property;" that said Martha had notice, actual or constructive, of said fraudulent acts of said McIntire; that said McIntire during all the period since said sale has appropriated to himself the rents and profits of said property; "that the said [foreclosure] sale having been made in pursuance of a fraudulent scheme to obtain said property for himself, the same is wholly void and should be so declared by a court of equity." The bill then prays that the defendants be required to answer the bill, and that the said pretended foreclosure sale be set aside and the deed of said trustee, McIntire, to Hartwell Jenison, and of Jenison to Emma Taylor, and of Emma Taylor to Martha McIntire be declared null and void; that an account be taken of what is due upon said note of \$450, and upon the payment thereof to the lawful holder thereof the trust be declared released and satisfied; that said McIntires account to complainant for rents and profits, and for general relief.

To this bill the defendants Edwin A. and Martha McIntire answer jointly denying all fraud and setting up that Martha McIntire is a *bona fide* purchaser for value from said Emma Taylor, whom she has seen a number of times and knows not to be a fiction. The defendant E. A. McIntire denies that he ever represented to the complainant or her husband or either of them that they might pay rent, and that the rent might be applied to the indebtedness or to the liquidation of the note; that there was never any understanding about a reconveyance to the complainant; that, "on the contrary, when the note was overdue and unpaid,

to wit, on or about the 2d day of May, 1881, the husband of the complainant advised defendant E. A. McIntire that he (Thomas Pryor) and his wife could never pay the note, but that they would like to deed their property to some one who would relieve him of this matter and allow him to remain on the lot for a while longer to carry on the coal and wood business." Accordingly, on the 3d day of May, 1881, the complainant and her husband joined in a deed in fee of said property to the defendant Martha McIntire, subject to the deed of trust of May 2, 1880; that on the day following said Thomas Pryor executed a written agreement to rent said lot from said Martha; that subsequently said Martha, learning that there was a very large sum due for taxes instead of the small amount represented by complainant, "thought it best to allow the property to be sold under the deed of trust." The answer then goes on to recite that, the note being overdue, said McIntire was authorized in writing by Jenison to foreclose the trust, which he accordingly did on the 28th of June, 1881, and "struck off" the same to said Jenison for \$806; that a deed was made to said Jenison, but he declined to advance any money to pay the expenses of sale and special taxes; that in consequence he negotiated a loan for Jenison for \$425, and a deed of trust to secure the same was executed by said Jenison and wife, dated June 29, 1881; that, at the instance of said Jenison, he (McIntire) endeavored to find a purchaser at private sale for the lot and for nearly a year had it advertised and placarded; that "on the 19th of April, 1882, said Jenison, declining to pay the note or the interest and fearing to risk a sale, lest the property should not sell for sufficient to pay the encumbrance and he would be held for the deficit, decided it was best for him to convey his equity in the property to the payee [Emma Taylor] of his note secured by said deed of trust of June 29, 1881, in consideration of the surrender and cancellation of said note, and about a month thereafter said payee [Emma Taylor] conveyed to the defendant Martha McIntire, who

had previously (as above recited) received a deed in fee of the same property from the complainant and the husband of the complainant."

That "some time after the above-recited conveyance was made to defendant Martha McIntire a quitclaim deed was made from said Jenison and wife to defendant Martha McIntire (and not to Emma Taylor, as alleged in the bill);" that the consideration of \$100 mentioned in said deed was paid to said Jenison, "who very gladly accepted it." Said quitclaim "*was executed to cover and cure a defect in the deed from Jenison to Taylor, and also to enable Martha McIntire to procure any rebate or drawbacks that might be given by the District authorities on account of the large bill paid for special taxes.*"

That defendant Martha McIntire is at present the owner of the lot; that about three years ago she erected four brick houses thereon, two on the F Street and two on the alley front; that said Mary Pryor never objected or gave notice of any claim whatever, "nor did either of these defendants know that she ever thought she had any claim thereto until the filing of this bill."

The defendant Jenison answered separately denying all knowledge of what occurred at the foreclosure sale or of what arrangements or agreements had been made by said McIntire, trustee, with complainant or her husband. He admits executing the deed to Emma Taylor, but says that he does not know whether she is a fictitious person or not. He never saw her or had any correspondence with her, but supposed at the time of executing the deed to her that she was a person in existence, but said supposition was based wholly upon his confidence in McIntire and the belief that he would not impose upon him or require him to execute a deed to a fictitious person; that if any fraud was perpetrated in the [foreclosure] sale of said property, it was wholly without his knowledge; that he has received but \$100 from said McIntire on account of said property. He

"offers no objection to the vacation of the deed by said McIntire to him or of the other deeds mentioned in the bill. He has no desire to take any advantage whatever of the complainant, and is perfectly willing to have the sale vacated and his trust reinstated upon the property, with leave to the complainant to pay whatever may be due of the indebtedness secured by said deed of trust."

Proofs were taken and, the case coming on for final hearing before the Court of Appeals, a decree was passed granting the prayers of the bill, from which decree the defendants have appealed to this court.

ARGUMENT.

The evidence develops the following facts: On the 2d of May, 1880, Mary C. Pryor, an uneducated colored woman, who made her living by taking in washing (Rec., 26), was the owner by inheritance in her own right of parts of lots 21 and 22, in square 569, of the city of Washington. The property is situated about the middle of the block on the south side of F street northwest between First and Second streets, contained 2,400 square feet, and was worth at that time from seventy-five cents to a dollar a square foot—that is to say, from \$1,800 to \$2,400, according to the opinions of expert witnesses.* It was then occupied by her husband, Thomas Pryor, as a wood and coal yard in a small way. Pryor himself was also an uneducated colored man, who, until he started this coal yard on his wife's property, had made his living by whitewashing, sawing wood, and doing odd jobs (Rec., 22 and 86). He died about two years before the bringing of this suit. Four years previous to the date just mentioned, viz., May 2, 1876, his wife and himself had placed a deed of trust (Ex. A. H. No. 2; Rec., 425) upon

* See uncontradicted testimony of Hellen, Cusick, Levy, Bennett, and Duncanson, Rec., pp. 372 to 387.

this property to secure their joint note of \$500, made to the order of Geo. E. Emmons and payable in two years with interest at 10 per cent. The loan had been made through the agency of B. H. Warner & Co., real-estate agents of this city. This note had been purchased as an investment (Rec., 36) by the defendant Hartwell Jenison, then and now chief of the loan division of the Treasury Department (Rec., 187). The trustees in the trust were B. H. Warner and Henry McIntire.

On the 2d of May, 1878, this note becoming due, there was indorsed upon it as follows: "Paid \$25.00 and also \$50.00 on ac. of principal" (Ex. A. H. No. 27; Rec., 450). Whether the note was thereupon extended does not appear. At all events, indulgence was given for two years more.

On the date first mentioned, viz., May 2, 1880, Thomas Pryor called upon the defendant E. A. McIntire, who, though a lawyer, never practiced as such, and was then and at the date of filing the bill following a real-estate and loan-brokerage business. The purpose of Pryor's visit to him was to arrange for borrowing \$450 on his wife's property in order to pay off the Jenison note (Rec., 239). Instead of lending him the money, McIntire saw Jenison and got him to extend the loan one year; but, as he says (Rec., 240), since it was "very natural" that he should want "to be trustee, get the commissions, and make a charge for drawing the papers, etc.," he, instead of merely making an extension of the old note, drew up a new deed of trust in which he substituted himself as *sole* trustee in place of B. H. Warner and Henry McIntire. The new note was for \$400, dated May 2, 1880, and made payable in one year to the order of Hartwell Jenison. The trust bore the same date, but was acknowledged May 27, 1880. From the date of this transaction McIntire became the trusted agent of both parties—of the Pryors because of their ignorance of business matters, and of Jenison because, being "engrossed in the duties of his office" (Rec., 397), he preferred that this matter should be attended to by an agent.

From the beginning to the end he never saw the Pryors or their property. McIntire collected the interest on the note (Rec., 311). Both the Pryors and Jenison had the most implicit confidence in McIntire's integrity. We shall in the course of this brief see how, as a natural consequence, they paid the forfeit of their misplaced confidence, *for in a little over a year and a half* the trusted agent had juggled both of his principals out of everything in sight—Mrs. Pryor out of her property and Jenison out of his money!

It will be observed that, as in all these cases, McIntire's first step was to make himself sole trustee in the trust securing the loan. The new note was for one year. There can be no doubt that such an experienced money-lender as McIntire is shown to have been by the evidence in these cases saw at once that with the maturity of this note at the end of the year the Pryors would be no better off than they were when they first called upon him for assistance in their financial distress. To have them entirely in his power by their inability to pay when the year expired was, no doubt, his principal motive in making himself the *sole* trustee in the deed, for, as the court will see, it would have been impossible for the frauds in these several cases to have been perpetrated had McIntire joined with himself in these trust deeds an honest cotrustee. Accordingly in just *one year* afterwards, viz., May 3, 1881, which was the very *next day* after the note fell due, we find him claiming to have obtained a deed in fee of this property from the Pryors to his sister, Martha McIntire, for the sum of *five dollars*!

This deed from the Pryors to Martha McIntire (Ex. A. H. No. 3; Rec., 425) stands as one of the monuments of fraud in this case. Mrs. Pryor testifies (Rec., 344) that she never saw Martha McIntire in her life, and that she never (Rec., 349) made a deed in fee of her property to her or to anybody. The paper itself is so erased and spoliated, both in the body of the instrument and the acknowledgment, as to completely refute any claim that it is an *honest* deed. We ask

the court to carefully inspect the original. It will be found that the name of the alleged grantee, Martha, is written over a neat erasure hardly perceptible until held up against the light. E. A. McIntire gives an incredible explanation of this erasure. He says (Rec., 187, 235, and 243) that Thomas Pryor came to him shortly before his \$450 note was due and proposed to him to convey the property to anybody for a nominal sum if the grantee would execute to him a lease of the property for a year at a small rent; that at that time he, McIntire, supposed the only lien upon the property was the \$460 note with about \$20 interest. He supposed the taxes were paid. Accordingly he says he went to his uncle David McIntire, who was at that time looking out for bargains in real estate, and offered it to him; that David agreed to take it, and he, E. A. McIntire, made out a deed to him of the property; but before it was executed David, for some reason which McIntire says he has forgotten, refused to take it—that is to say, although David McIntire was a man of means and was looking out for bargains in real estate, he would not give five dollars for a piece of property worth from \$1,800 to \$2,400 and subject only to liens of about \$475. We submit that in asking us to believe this, to say nothing of the claim that Mrs. Pryor was willing to sell an equity of at least \$2,000 for five dollars, is putting too great a tax upon human credulity; but he tells us that as David refused to take the property he wrote to his sister Martha, who was then living in Philadelphia, and offered it to her, and that she agreed to take it. She, however, authorized (Rec., 235) no agreement for a lease to be made with Pryor (although, according to his statement, that was the very condition upon which Pryor wanted to sell) until *after* the deed was made to her, when she “turned around and leased it to him for a year.” As the lease was made the very next day and as Martha was at that time in Philadelphia, the arrangement (?) must have been made by telegraph. McIntire says he sent the deed to his sister in Philadelphia

without recording it, and that it was never recorded because shortly afterwards, it being discovered that there were about \$250 of special taxes on the property, she "gave up" the purchase (Rec., 155), and yet on May 31, 1884, she is shown on her own figures to have paid "Emma Taylor" for this same property \$1,425, and McIntire called it "a bargain" at this price (Rec., 193).^{*} But, as we have said, the defendant Martha claims now nothing under this deed (Rec., 236), even were it in its spoliated and unsatisfactorily-explained state admissible in evidence. It was, as we have seen, never recorded and is practically out of the case, except as it stands to indicate the methods of the McIntires and the credibility of their testimony. McIntire's testimony in regard to this transaction will be found at pages 187, 196, 235, and 245 and Martha's at pages 105, 135 of the Record.

Exactly how McIntire got this deed from the Pryors will probably never be known. It is more than likely, however, that it was obtained just as many another such deed has been fraudulently obtained under one pretense or another from unlettered and unsophisticated persons. Knowing McIntire as we have learned to know him by the knowledge of the marvelous number of forged deeds, spoliated papers, and fraudulent transactions evidenced in these cases, we have not the shadow of a doubt that the erased name in the deed was *Edwin A.*, but subsequently, reflecting that his position as trustee was inconsistent with such a conveyance, the words "Edwin A." were neatly erased and the word "Martha" written over it; and that this was done *after* the deed was executed is evident not only from the neatness of the alterations, but especially because the note of the correction written below Helmick's signature as a witness is shown by the expert (Rec., 93) to have one of its lines

^{*} That is to say, she paid her \$2,500 "in lump" for the Pryor property and the Southey property. The Southey property, McIntire says, was not worth more than \$1,175 (Rec., 876). Deduct therefore \$1,175 from \$2,500 and we have \$1,425 as the value of the Pryor property.

written over the signature, which could not have been done unless it had been *first* witnessed. The deed is plainly the evidence of an abandoned attempt on the part of McIntire to get in this mode the record title to the property, and the reason for his abandonment of it is not hard to find. Soon after the deed was made he naturally desired to know what taxes were due on the property. That examination disclosed the existence of a large unpaid special tax of \$226 (Rec., 188). To take the title under this deed would have required not only the payment of that tax, but the assumption of Jenison's trust of \$450, whereas by getting a deed to the property *for nothing* from Jenison, as we shall see he subsequently did, the payment of this \$450 would be saved. Thus it was that McIntire within a very few days after the making of this deed of May 3, 1881, abandoned the idea of claiming under it and set out to bring about a foreclosure sale. The technical default existed to apparently justify the foreclosure, and therefore, though the property was well worth three times the amount of the liens upon it, this pretended friend of the Pryors, who almost slops over as he tells us of his tender feelings for them, *indites in his own handwriting a direction to himself to foreclose the trust*. The next step was to secure Jenison's signature to this paper. To do so he had only to alarm Jenison. The latter says McIntire told him that Pryor had "refused to make any further payments on the note, and that there were taxes also against the property which, together with the incidental expenses [of a foreclosure sale], would about equal the face of the note" (Rec., 37). Of course on this statement Jenison signed the order to foreclose which McIntire had written out for him to sign. He had placed, as he tells us, the whole matter in McIntire's hands, and a mere *suggestion* from him was enough. The order was written on the deed and was dated May 25, 1881, about three weeks after the alleged deed to Martha, and reads as follows:

"Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction. Washington, D. C., May 21, 1881" (Rec., 43).

So completely had Jenison given the management of the whole matter to McIntire, and such "entire confidence," to use his own words, did he have in him (Rec., 40) that he says he gave so little thought to the signing of this paper that the fact of doing so had completely passed out of his mind, and but for the fact of seeing his signature affixed to this writing he could not swear he had ever given an order to foreclose the trust, and indeed, until his attention was called to his signature, he did actually declare to complainant's counsel that he had not done so, as is shown by the recitations of the original bill. In pursuance of this order the property was advertised in the daily *Critic* (Rec., 7), a small one-cent afternoon paper of little circulation (now defunct) and having then a struggling existence.

The first intimation which the Pryors received that any sale of their property was intended was the seeing of the flag before their property on the morning of the day of sale, June 17. Mrs. Pryor says :

"We first saw the flag out in front of the property, which we occupied then as a coal yard, on F street, in the morning between nine and ten o'clock. *We did not know what it meant*, and then my husband went down alone to see Mr. McIntire, but he did not see him. Then Mr. McIntire came down there that day, and my husband asked him about the flag being out there, and Mr. McIntire said that the trustee (*sic*) was pushing him and he was compelled to put the flag up and have a sale, but that he would allow my husband to bid it in and would knock it down to him" (Rec., 22).

Thomas Pryor was to pay for it with his notes, but afterwards McIntire told him he must pay rent, which he would allow to go upon the purchase price.

Of course, counsel for complainant do not for a moment

content that it was ever McIntire's intention to carry out such an arrangement with Pryor; nor do they contend that Mrs. Pryor, unsophisticated and unlettered as she is, is able to give the exact terms of the arrangement by which her equally unlettered husband—a whitewasher and wood-sawyer—was quieted by McIntire and brought to submit to a foreclosure sale of his wife's property. What we do say, however, is that if human testimony is worth anything Pryor did bid at the sale *and the property was knocked down to him*. This is proved by the testimony of *five* witnesses, contradicted only by McIntire himself. The witnesses Johnson and Holliday were at the sale. They knew Pryor well, and, though they were separated in giving their testimony (Rec., 31) and did not know what the other had testified to, they both swore that the property was knocked down to Pryor.

Thus, Johnson says (Rec., 32):

"Q. Do you remember who the property was knocked down to?

"A. It was knocked down to Pryor."

And Holliday, at page 34:

"Q. You heard the auction sale going on?

"A. Yes, sir.

"Q. Do you remember to whom the property was knocked down?

"A. Well, it was struck off to Pryor. I was standing right at the gate."

Ragan, another witness and an owner of property in the neighborhood, says he was present, and, although he frankly admits that his recollection is faint in regard to the occurrence, he says that recollection is that the property was knocked down to Pryor. It was sought to impeach this testimony of Ragan's because of his confessed vagueness of memory as to the sale. But fortunately another witness supports his recollection and gives the most indubitable

proof that Ragan's memory is not at fault. This witness (Jacobs), who lives in the neighborhood, says that he got to the *locus* of the sale just as it was over, and that he met Ragan coming away from the crowd and asked him who bought the property, and Ragan said "Pryor had bought it in" (Rec., 31). This corroborating testimony of Jacobs is clearly admissible in view of the defendant's attempt to discredit Ragan's testimony.

In *Baber vs. Broadway & S. A. R. Co.*, 29 New York Suppl., at page 43, the court, speaking of declarations made by a witness out of court in corroboration of testimony given by him on the trial, say they are generally inadmissible, but that there are exceptions to the rule, and go on to say :

"In order to come within the above exception to the rule, it is not necessary, as contended by appellant's counsel, that there be a direct charge of fabrication. It is sufficient if the impeaching evidence tends to show that the account of the transaction given by the witness is a recent fabrication or was prompted by corrupt motives (*In re Herdra's will*, 119 N. Y., 618; *Herrick vs. Smith*, 13 Hun., 446) or where the object of the cross-examination is to show that the testimony of the witness is an afterthought and a subsequent invention (*Gilbert vs. Sage*, 57 N. Y., 639, 640; *Wray vs. Fedderke*, 43 N. Y. Super. Ct. Rep., 335, 340; *Com. vs. Wilson*, 1 Gray, 337, 340). In the case before us it is apparent, from a careful reading of the proceedings and evidence, that the object of the question put on the cross-examination of the hospital surgeon with respect to any statement made by George L. Baber (the witness above referred to) when he was brought to the hospital, the cross-examination of the boy, and the defendant's direct examination of its witness, all had a tendency and were calculated to impeach the boy's testimony and to stamp it as an afterthought and a fabrication of recent date; and under these circumstances and within the authorities above cited it was proper to show in answer that he had previously told the same story."

Mrs. Pryor also says that the property was knocked down to her husband. An attempt was made by de-

fendants' counsel to show that she was too far from the sale to hear anything about it, but the contention of counsel evidently grew out of a misunderstanding of her testimony as to *where* she was standing while the sale was going on. He understood her to say that she was standing at the window of her house *across the alley*, whereas she says (Rec., 344) she meant the window of the house *on the lot*, which house on the lot was across the alley from the house where she was living at the time of giving her testimony. Her language is, "I was in my house [on the lot], at the front window, and could see. It [the house] was just across the alley [from her home], and they had not built there then"—that is, the houses which McIntire subsequently built there were not then on the lot to obstruct the view.

The only way by which the court can find that the property was not knocked down to Pryor is by throwing completely out of the case the entire testimony of these five witnesses, whose credibility is unimpeached, and who are not contradicted by a single witness except Edwin A. McIntire, whose testimony is so tarnished by palpable perjuries and forgeries that it would be, we respectfully submit, a mockery of the rules of evidence to call him a *credible* witness.

So that we say the property was, as matter of fact, knocked down to Pryor in pursuance of some arrangement between him and McIntire. How is it, then, that a paper (Ex. A. H. No. 21; Rec., 444) produced by McIntire and purporting to be the bill of Coldwell, the auctioneer, for crying the sale, makes it appear as if Jenison had bid in the property? The answer is, first, that the paper has been *tampered* with. The *date* of the sale is in a different handwriting, and the figures \$25 have been palpably changed. The name of the purchaser is at the end of the bill, and could have been added long after the sale; but, aside from this, the paper, even if *genuine*, being a mere *ex parte* statement by a third party, not even a witness in the case, is the merest *hearsay*, and under a plain rule of evidence, does not even *tend* to prove the

statement written upon it ; but, suppose it were admissible, it is easily explained. Complainant's counsel, as we have said, do not contend that McIntire ever for one moment intended to make a deed to Pryor of the property in pursuance of his bid. He well knew that he, as trustee, had no power to enter into any such arrangement, but a man such as McIntire must be if "Emma Taylor" be a fiction and her pretended signatures forgeries (and if they are not proved to be forgeries, then our case is at an end) could very well let the property be knocked down to Pryor for the purpose of disarming and quieting him and then some time afterwards get the auctioneer, who was his intimate business friend and who had, as the evidence shows, his office with him (Rec., 638) and made all of his sales, to make out the bill as if Jenison were the purchaser on the statement that Pryor could not perfect his bid and was willing that Jenison should, under some arrangement which McIntire could make plausible enough to Coldwell, buy it in at 31 cents a foot. Why should Coldwell refuse to do this? He had no reason to suspect any fraud, and McIntire was ready to pay him when he presented his bill. Many another man would have done the same thing without the slightest idea of wrong. Of course, we are only left to surmise as to the origin of this bill of Coldwell ; hence the importance of the rule of evidence which declares it *inadmissible* as proof of a sale to Jenison. Coldwell is not alive and, of course, could not explain its origin. But if he were alive and were to swear that he knocked the property down to Jenison and not to Pryor, then he would stand contradicted by five witnesses, each of whom is at least of equal credibility with himself.

The proof that McIntire never intended to let Pryor have the property is found in the letter *which McIntire wrote and addressed to himself*, but got Jenison to sign, authorizing McIntire to bid on this property for him, Jenison (Ex. A. H. No. 5 ; Rec., 430).

But while to the intelligent lawyer McIntire's arrange-

ment with Pryor to let him bid in the property and pay for it either in notes or installments could but seem absurd and preposterous, it did not seem so to an uneducated and unsophisticated colored wood-sawyer and whitewasher such as Pryor was. With his confidence in McIntire and with the latter's intelligence, no one can doubt how easily this old darky was but wax in his hands. But we have perhaps given too much time to this feature of the case, because it is utterly immaterial whether the property was knocked down to Pryor or not, since it is not necessary to claim anything from it except so far as it is a circumstance going to show the unfaithful character of the trustee and his *mala fides* in respect of his trust. The bill, of course, recites this fact among other matters, as showing McIntire's fraudulent dealings with the property, and while we insist that we have proved by credible witnesses the charge that it was knocked down to Pryor, and proved that he complied with his bid, according to the understanding had with McIntire, by paying rent until he was prevented by McIntire from doing so any further, and while it is true that relief can be granted upon that ground alone, yet relief may be granted upon the further ground set forth in the bill, to wit, that "*the said [foreclosure] sale having been made in pursuance of a fraudulent scheme on the part of said E. A. McIntire to obtain said property for himself, the same is wholly void and should be so declared*" (Rec., 10). And, again, the bill elsewhere repeats the charge "*that the said sale was made by the trustee, McIntire, really in his own interest and with the intent to obtain for himself by fraudulent representations to complainant, her late husband, and the said Jenison the title to the said property,*" &c.

Under this charge it is immaterial, as we have said, whether the property was knocked down to Pryor or to Jenison. In either event, it was the initial step in a series of fraudulent manipulations of the property whereby the record title finally reached McIntire cloaked under the name of "Emma Taylor." We might be quite willing, therefore,

to concede that everybody is swearing falsely but McIntire, and that the property was, as matter of fact, struck off to Jenison for \$806, although, as we have shown by the testimony of four or five well informed witnesses whom nobody contradicts but McIntire, that it was well worth from \$1,800 to \$2,400, and the trustee, therefore, had he been faithful to both parties to the trust, as he should have been, would not have so sacrificed the interests of one of them.

Let us therefore follow the history of the property, as disclosed by the evidence, on the assumption that the sale was to Jenison, as McIntire claims it was. We concede, as we have said, that the Pryors were in default to Jenison, and that McIntire had a perfect legal right at Jenison's request to foreclose the trust. We concede also that Jenison had a perfect right to request McIntire to bid for him a sufficient sum to protect his interest, and that even if the bidding at the sale amounted, as it undoubtedly did, to a mere mock auction, yet it is too late, since Jenison was no party to the fraud, to seek relief after this lapse of time against Jenison if he or his *bona fide* grantee for value were here opposing such relief; but, as we shall see, there is no *bona fide* grantee for value before the court opposing the setting aside of the sale, and Jenison, so far from opposing it, consents to it and asks that it be done; but of this hereafter. Our purpose now is to present to the court the history of McIntire's dealings as trustee with the property from the moment it was struck off, *as he claims*, to Jenison.

June 17, 1881, is the date of the foreclosure sale. McIntire testifies (Rec., 190) that the expenses of the sale, viz., trustee's commissions, \$40.30; auctioneer's fee, \$23.12, and advertisement in the *Critic*, \$24.46, or a total of \$87.88, Jenison declined, because of inability, to pay. The taxes, general and special, amounted to \$278.81. Jenison was, of course, told the expenses, at least, must be paid before a deed could be made to him of the property. It was also duly impressed upon him that the special taxes "must be

paid at once; otherwise the District itself would foreclose the property " (Rec., 396). Of course, Jenison, as McIntire knew, because Jenison had previously told him so (Rec., 37, 395), had no money to pay off these charges, and the result was just as McIntire intended: Jenison, at McIntire's suggestion, makes his note to the fictitious but ever convenient "Emma Taylor" (of course believing her to be a genuine person, for McIntire claimed to be her agent) for \$425, payable in one year, and secures it by a deed of trust upon the property executed to E. A. McIntire as *sole* trustee. This deed, drawn by McIntire (Exhibit A. H. No. 26; Rec., 447), was dated and acknowledged June 29, 1881, just twelve days after the foreclosure sale. It is admitted by McIntire that none of this \$425 was actually paid to Jenison. He says, however, he disbursed it for him, although as to the item of \$278.81, special taxes, he "does not remember" whether he paid it immediately or not, as there was, he says, sometimes "an advantage in delaying the payment" (Rec., 260).

The ostensible purpose of this trust deed, it will be observed, was to raise the money to pay off these taxes and expenses of sale so that Jenison should take the property in satisfaction of Pryor's \$450 note, subject only to an incumbrance of \$425. On the same day that this trust deed was executed to McIntire, viz., June 29, 1881, McIntire in turn executed to Jenison a deed of the Pryor property in alleged pursuance of the foreclosure sale.

The *paper* title to the property is now in Jenison, *but not the record title*, for although the deed securing "Emma Taylor" was recorded a few days afterwards (July 11), the deed from McIntire to Jenison was not recorded for nearly *ten months* afterwards, viz., April 21, 1882 (Rec., 8). During all this period the deed was in McIntire's possession (Rec., 44). He says he handed it to Jenison, but admits the latter handed it back to him (Rec., 207 and 254). His excuse for not recording the deed is that Jenison would not give him the \$1.50 recording fee. Jenison, on the other hand, says,

and we can readily believe him, that he has no recollection of ever refusing to pay the \$1.50, but that he is confident "that if he [McIntire] represented that it was necessary for me to pay that fee I should not have refused" (Rec., 395). It is hardly credible that McIntire with \$425 (received by him, as he says, from "Emma Taylor") in his hands to pay the *expenses* of the transaction, and also being the collector of the rents of the property for Jenison, he (McIntire) would fail to record so important a deed for the lack of a dollar and a half, especially as it was his duty as "Emma Taylor's" agent to record it when she made the loan on the strength of Jenison's title. He evidently had a *purpose* in keeping the deed off the record. It is important to note, also, that McIntire says (Rec., 253) he gave "Emma Taylor" the abstract of title upon which the loan of \$425 was made by her. If he did, the abstract would have shown that at that time the record disclosed no title, legal or equitable, in Jenison, since the deed to Jenison was not then recorded and was not recorded until ten months afterwards; and yet he would have us believe that "Emma Taylor," who, on his own showing, knew enough of lending money on real estate to require an abstract of title, loaned on the strength of an abstract which showed by the *recorded* deeds that the borrower did not own the property!

This \$425 note of Jenison's to "Emma Taylor" would become due in one year, viz., June 29, 1882. As it neared maturity, Jenison grew nervous; he had not the money to pay it. McIntire had promised him that he would endeavor to find a purchaser of the property before the note fell due, so that Jenison would get back at least a part of the four hundred and fifty dollars loaned to Pryor, not a dollar of which he had yet received. But it was entirely foreign to McIntire's purpose to find any other purchaser for that property than "Emma Taylor." The failure to find a purchaser was but carrying out his plan to bring Jenison to "a frame of mind" that would make him think a favor would

be conferred upon him if he could but be permitted to turn the property over to her in satisfaction of the note which he supposed she held; and so we find Jenison disheartened with bad reports as to the chances of sale. Jenison says (Rec., 397) he [McIntire] told him that he could not find a purchaser; "that the property was not eligible." No one, he was told, would give a thousand dollars for it, which was about what it must bring to make Jenison whole. Jenison himself was entirely ignorant of the real value of the property; he had never seen it.

"Q. Did you have any idea or knowledge as to the value of this property other than you had obtained from Mr. McIntire's representations to you as to its value?

"A. Not at all.

"Q. Did you make any inquiries yourself?

"A. I did not. I was engrossed in my office duties and took no interest in real-estate matters, but relied implicitly upon what Mr. McIntire told me about real-estate matters, supposing that he was better posted in that line.

"Q. From the statements which he made to you in regard to the property, you became possessed of the idea that it was not a very valuable piece of property?

"A. I did."

Rec., 397.

This was the state of Jenison's mind as the note neared maturity. His agent, upon whom he relied so implicitly to sell the property and bring him out without loss, was undoubtedly working in his own interest and not his principal's, and so to Jenison the prospects looked bluer than ever. He had even asked McIntire to make an exchange of it for a piece of unincumbered land, which, of course, McIntire reported "could not be effected." What is to be done? He is already out \$450 on account of the Pryor note, and he is soon to be called upon to pay \$425 more, with nothing to show for it but a piece of property which his agent, an experienced real-estate broker, has informed him can neither

be sold or exchanged, even for enough to pay "Emma Taylor" her \$425, and yet a half dozen qualified witnesses tell us the property was worth from \$1,800 to \$2,400! What more natural thing for Jenison to do under such circumstances than to sit down and write to McIntire this letter about two weeks before the maturity of his note:

"TREASURY DEPARTMENT.

"REGISTER'S OFFICE, April 13, 1882.

"E. A. MCINTIRE.

"DEAR SIR: I take it for granted that you have not effected any trade or exchange for my lot, and I presume there is not much prospect of making a sale before the maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a condition to carry it.* I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better, I wish you would advertise and do the best you can in its disposition. If you happen to be up to the Treasury, please call. I have looked into your office several times, but found you '*non est*.'

"Truly yours,

H. JENISON."

Ex. A. H. No. 6; Rec., 430.

"Not in a condition to carry it." How thoroughly Jenison's eyes had been shut by this man. The evidence shows that the Pryors were and had been for nearly a year paying six dollars a month rent for this lot, \$72 a year. The interest on the note was 8 per cent., or \$40 a year, and yet Jenison could not carry the note! Why not? Because McIntire never told him that he was *renting* the property. This money he was putting into *his own pocket*. "I did not know that the property was being rented," says Jenison (Rec., 40), and he is "positive" that he never received a dollar from it except the one hundred dollars received some years afterwards for a quitclaim, and this McIntire practically admits, but says he accounted for the rents by expending it in repairs, when there was nothing but a "shanty," as he himself calls it, on the property—a small one-room frame, used as a coal office, and which cost originally probably \$25 to build. It is impossible to make us believe that he spent \$72 a year *repairing* this shanty or even the wooden fence around the lot.

When we consider that by the uncontradicted testimony of a number of real estate experts this property was at that time worth over \$2,000, this letter puts plainly before us how completely in the dark McIntire had kept Jenison as to the real value of the property. The foot-note shows how he had had his eyes shut as to the renting of it. Had this property been put up at a fair sale it would undoubtedly have brought from four to five times the amount of Jenison's indebtedness; but if it had brought only 25 cents a foot, which would be 6 cents a foot less than it brought at an alleged "honest" auction sale less than ten months previously, it would have paid off the "Emma Taylor" note and left a small sum over for Jenison; for at 25 cents a foot it would have brought \$600. Jenison wanted an auction sale. He says (Rec., 398):

"I had become convinced it [an auction sale] was the only way to clear myself, because, as the note was nearly matured and there was no other alternative, I thought it better to submit to a sacrifice and have the matter disposed of."

But an honest properly advertised auction sale would have defeated the plans of him whose manipulations of the property from the day Pryor first came into his office for help had been one consistent scheme having for its object the obtaining of the title to it. It was important, therefore, to get Jenison out of the notion of an auction sale, and so an interview is immediately had with him, and here is the result of their conversation, according to McIntire's own testimony (Rec., 192):

"He asked me [McIntire] whether I could not get Miss Taylor to take the property from him. I interviewed her. *She at first did not want to do it*, but afterwards consented to do it and the deed was made by him and his wife to Emma Taylor."

"Emma Taylor," the woman who was "always looking out for bargains," who had loaned \$425 on over \$2,000 worth

of property, "did not want to take it at first at \$425, but afterwards consented" to take it at one-fifth of its value! This is the way our credulity is to be strained in order to believe this man. It is the reading of McIntire's testimony more than any other evidence in these cases which must convince any reasonable mind that "Emma Taylor" is E. A. McIntire. On every page where he speaks of her it is perfectly palpable that he is manufacturing his statements, just as he manufactured his "Emma Taylor" deeds, his Ackerman deed, and his Pryor deed to Martha McIntire, and spoliated the many papers in these cases.

The deed in fee from Jenison and wife to "Emma Taylor" is dated and acknowledged April 19, 1882, ten months and two days after the foreclosure sale, and more than two months *before* the Emma Taylor note was due, showing the expedition with which McIntire proceeded in his determination to get the title out of Jenison and in himself, for the conveyance to "Emma Taylor" was practically a conveyance to himself. It was recorded at once, viz., April 21, 1882. The *record* now shows that Jenison has parted with his entire interest, legal and equitable, to the Pryor property to "Emma Taylor," viz., E. A. McIntire. Consequently the time has arrived for McIntire to record *his* deed to Jenison, and accordingly it is taken from McIntire's safe, where it had lain for these ten months, and accompanies Jenison's deed to Emma Taylor to the record office; they are recorded *together* in Liber 1003, the deed to Jenison at folio 187, and the deed *from* Jenison at folio 188. Both of these deeds were subsequently returned by the recording office to *McIntire*, whereas Emma Taylor was the person to whom they should and would have been returned had she not been a fiction. We have already noticed the fact that every one of these Emma Taylor deeds was returned, after being recorded, to E. A. McIntire, and yet he tells us that he has "no recollection" of a single one of them being returned to him.

If we consider that had McIntire placed upon the record his deed to Jenison immediately after its execution it would have been in Jenison's power to convey a good record title to any purchaser independently of McIntire and without his knowledge, and thereby have defeated any scheme of his to eventually obtain the title for himself, we will readily see McIntire's *reason* for not recording it at once; but, of course, *after* Jenison had conveyed in fee to "Emma Taylor" there was no further danger on that score, and at once his deed to Jenison—so necessary to perfect the record title—goes to the recording office. The fraud is consummated. Pryor and Jenison have been successively and successfully juggled out of the property, and neither has a dollar to show for it. Jenison has lost his mortgage and Mrs. Pryor her property. The trusted agent of both has gobbled up everything in sight. Different minds may draw different conclusions from the facts as we have recited them, but they must all reach in the end the one salient, undeniable, ultimate fact that E. A. McIntire has perpetrated a consummate fraud, and that Pryor and Jenison are his victims.

But the learned counsel for the defendants have contended that as Mrs. Pryor was in default in not paying her note, the trustee, McIntire, had a right to sell, and, conceding "Emma Taylor" to have been a fiction, yet the party defrauded is Jenison and not Pryor, and therefore no relief can be had on a bill filed by Pryor alone. This contention, we submit, grows out of a complete misconception of the law.

As was said by the court in *Lewis vs. Denison* (2 App. D. C., 382):

"For the punishment and prevention of frauds and in the interest of morality, the defendant should be held estopped to plead that he did not make a *bona fide* sale of plaintiff's lots, and that he defrauded *another* instead of the plaintiff in converting to his own use the difference between the money realized and the money paid over. To this it may be au-

swered that *the defendant was the agent of both plaintiff and Battelle.*"

Mrs. Pryor was entitled to an *honest* foreclosure sale, not a sale made, as the bill alleges, "really in his [the trustee's] own interest and with the intent to obtain for himself" the property. If it be true that the trustee, McIntire, when he exposed the Pryor property for sale for the admitted default in the payment of her note, did not do so in *good faith* and with an impartial purpose to protect the best interests of *both* parties to the trust, to wit, Pryor and Jenison, but, on the contrary, with a view solely to *his own* interests, making the sale as *one step* in a series of steps necessary to be taken, and which were, accordingly, afterwards taken, to the end that he, McIntire, should eventually obtain the title to the property, then we say we have established the allegations of the bill, and such a sale cannot be allowed to stand if either of the *cestuis que trustent* object to it, and *a fortiori* if the objecting *cestui que trust* be the owner of the property. A sale of trust property must be a sale for *bona fide* purposes and not as a step in the execution of a fraudulent purpose on the part of the trustee to obtain the property for *himself*. That he had the legal right to make the sale when requested by the holder of the note will not make the sale valid if it was not made by the trustee with the *intent* to protect the interest of both parties, but, on the contrary, with the single view to advance the trustee's own interest.

A trustee cannot act impartially and honestly when he is acting with a secret and fraudulent motive, although his act have the outward appearance of being in behalf of the parties to the trust. If the *motive* of the sale was not to benefit the parties, but himself, and if the *result* of the sale has been to benefit himself and injure both the *cestuis que trustent* or either of them, the sale, of course, is voidable at the request of either of the parties injured. The only question is, Has Mrs. Pryor proved the charge? If she has, it matters not that

she was in default. That fact did not disentitle her to the services of an honest trustee, acting with an honest purpose to advance the interests of his *cestuis que trustent* rather than his own.

McIntire's dealings with the Pryor property show a course of conduct consistent with but one theory and no other, to wit, a purpose on his part from beginning to end to defraud both Mrs. Pryor and Jenison out of it. His actions were taken first to so shape the conduct of Mrs. Pryor as to bring about his apparent right to sell her out, and, having succeeded in this, the evidence shows that he did immediately claim to have sold her out and at a price largely disproportionate to the real value of the property, so that he would have nothing to pay her after her defaulted note was satisfied. Having got her out of the way, he proceeds in the same purpose with Jenison. These acts all relate to each other. Even taken separately, they indicate fraud; but taken *together* the *fraudulent motive* becomes irresistibly apparent. They were initiated in fraud and consummated in fraud. A foreclosure sale made under such circumstances is too deeply stained with treachery to stand, when it appears to the court that it was undertaken solely for the benefit of the trustee and resulted *solely* to his benefit. The parties who should have been benefited have both been swindled by his action; both of them cry out against it. *To set aside the sale will enable the borrower to regain her property and the lender his money.* Who opposes it?

McIntire himself does not oppose it. Being the trustee, he cannot, of course, do so. He disclaims, therefore, all interest; but his sister, Martha McIntire, steps forward and declares herself to be an innocent purchaser for value. We have already shown that she is nothing of the sort; that she has signally failed to show that she ever paid so much as a single dollar for this property. Her swearing that she knew "Emma Taylor," had seen her, and had more than "ten relatives" who had seen her, etc., show her to be utterly

unworthy of belief; and, moreover, her brother's knowledge, as her agent, is, as we have seen, her knowledge.

But McIntire insists that his dealings with the property have been free from all fraud; that the deed in fee of Jenison to "Emma Taylor" was a conveyance to a genuine person and not a fiction; that, moreover, she was a *bona fide* grantee for value, and was the owner of the property from that date until May 31, 1884, when she conveyed (?) to his sister Martha, who is the principal defendant in this case, and indeed in all of these cases but that of Hayne.

We have already discussed the question of the fictitiousness of "Emma Taylor," but it may be well to note here that if "Emma Taylor" were a genuine person, as McIntire claims, then from the date of Jenison's deed to her until she conveyed to Martha, viz., from April 19, 1882, to May 31, 1884, a period of about thirteen months, she was entitled to receive the rents of the property. McIntire is closely questioned in regard to these rents (Rec., 247-309), and he repeatedly declares he has "no recollection" of collecting them for "Emma Taylor." On the other hand, we show written receipts from him to Pryor for the rents of this property covering the period when, as he says, "Emma Taylor" owned it, and, as shown by the auditor's report, bills paid by him for repairs and taxes upon it for the same period. These receipts are as follows: April 15, 1882, and May 12th, June 15th, July 15th, and August 15th of that year (Ex. A. H. No. 1; Rec., 424). We also show his written receipt for March 18, 1883 (*id.*), and also a postal card of the same date directed to Pryor and telling him to "please call and pay his rent" (Ex. A. H. No. 52; Rec., 464). That he collected the rents for those months for which no written receipt can be produced there can be no reasonable doubt. Besides this we show by the testimony of Fitzhugh, a clerk from the tax office, that the taxes for this property for the period in question and long afterwards were paid by McIntire's check (Rec., 121), and the witness Darneille (Rec., 61),

also a clerk in the tax office, shows that they were still being paid by McIntire in 1891, and though McIntire denied all of this at first, as soon as the decree of the Court of Appeals was against him he went before the auditor and admitted it all by showing his receipts for these very taxes and claiming credit for having paid them, and not only for taxes, but for *repairs* made by him during the same period. If all these rents and taxes and repairs were being collected and paid for up to May 31, 1884, on "Emma Taylor's" account, as they must have been if she owned the property up to that date and as he insists she did, it certainly is not unreasonable to ask that some evidence of his accounts with her, or receipts, or letters, or written evidence of some sort, be produced which would at least *tend* to show dealings with her; but though frequently called upon to produce such evidence, McIntire reluctantly admits that he has nothing of the kind.

So of the deed which McIntire and his sister claim was executed by "Emma Taylor" on the 31st day of May, 1884 (Ex. A. H. No. 14; Rec., 406), and which purports to convey the Pryor property and the property described in the Southey case to Martha McIntire for a consideration of \$2,500. We beg to ask the careful inspection of this deed (which is before the court, Ex. A. H. No. 14); it is a plain forgery and so testified to be by the experts (Rec., 93 and 785). The manufactured signature of "Emma Taylor" is, as usual, utterly unlike any of her other alleged signatures. One of the badges of fraud in connection with this deed is that it, like all the other "Emma Taylor" deeds, was not recorded until long after its date, in this particular instance not until October 14, 1884, nearly two years and a half.

The failure of McIntire's testimony to "dovetail," as it were, is well illustrated by the above deed. It will be remembered that the Southey property, according to McIntire, was worth about \$1,175. At page 876, McIntire is interrogated in reference to the sufficiency of the price

which the Southey property brought at the foreclosure sale, viz., \$1,175 :

" Q. So you think it brought its full value ?

" A. Yes, sir ; in my estimation."

Deducting, therefore, \$1,175 from the \$2,500 paid for the two properties, we have \$1,425 as the approximate value placed upon the Pryor property by McIntire in May, 1884. He also says that he considered the two properties " a bargain " at \$2,500 ; so that what three years before Martha had refused to take from Pryor for five dollars, subject to an incumbrance of about \$700, because she did not consider it worth that much, she now pays " Emma Taylor " more than twice as much for, viz., \$1,425 cash, and considers it " a bargain." Moreover, it will be remembered that although this property was worth, even on McIntire's showing, \$1,425, " Emma Taylor " " did not want to take it " from Jenison even at \$425 ! When people tell several stories their inconsistency can be made apparent if they are lies. McIntire relates the manner of the purchase by his sister of this property from " Emma Taylor." He says (Rec., 261), " She [' Emma '] called at my office and asked me if I could find a purchaser for the [two] properties, as she wished to use some money at once and would sell cheap." She wanted \$2,500. He does not *remember*, nor does his sister, whether any price was named separately for the two pieces. " There might have been something said about the separate values, but I have no *recollection* of it now " (Rec., 261). " It was just lumped." The whole amount was paid cash down, but, as usual, he does not *remember* whether he paid it by check or in money ; he does remember, however, that his sister gave him the \$2,500 in cash to pay it with, but he says if he paid it in cash he took no receipt. And his sister Martha for the life of her cannot tell how, when, or where she got or paid this \$2,500 !

On the 1st day of October, 1886, McIntire made a con-

tract in his sister Martha's name with Medford & Waldron, builders, to erect four small houses on the property for \$3,600. Medford (Rec., 48) testifies that he never saw Martha in the transaction; that every dollar was paid him by McIntire either in cash or by his check, and neither McIntire nor his sister show where the money came from that they claim was hers, a matter which could have been easily proved if it really was her money; but we have dealt elsewhere with the question of Martha's financial abilities and need not repeat our argument upon this point. He continues as before to pay the taxes and collect the rents, and while he could not remember doing so for "Emma Taylor" he has no difficulty in remembering (?) that he did so for Martha.

September 27, 1887, McIntire discovered a flaw in the acknowledgment of Jenison's deed to "Emma Taylor" and obtained from him a quitclaim to Martha (Ex. A. H. No. 17; Rec., 439). For this quitclaim deed McIntire says he paid Jenison one hundred dollars, because the latter demanded that sum. On the other hand, Jenison says (Rec., 39, 40) that when McIntire handed him the check "it was quite unexpected," for he (Jenison) had never demanded anything for giving the deed; that when he received the money he supposed McIntire had been able "to realize something for him out of the transaction"—a transaction out of which up to that time Jenison had stood a loser to the extent of his \$450 loan, without a single dollar to show for it. It is, immaterial, however, how Jenison understood it, for at that very time, if McIntire had accounted to him for the rents of the property which had been collected and pocketed by him, there would have been payable to Jenison very much more than one hundred dollars, so that, in point of fact, the payment was simply a payment to Jenison of a part of the latter's own money and not a consideration for this quitclaim.

The property thus stood in Martha McIntire's name, the rents being collected by E. A. McIntire. If these rents were

ever paid over to her previous to 1889, when the fictitious character of Emma Taylor was first discovered by his nephew, Henry McIntire, there is no evidence of it except the mere assertion of McIntire and sister. No books of account, no checks, no receipts, nor any written evidence of any sort are produced to substantiate their mere statement. Certainly, if these rents had been collected by him for Martha and paid over to her, as he says they were, he would have some slight written evidence, if only in checks received by her. Nothing of the sort is produced. It is true he offers in evidence a batch of forty-nine checks (Ex. A. H. No. 31), which he says were payments to Martha on account of rents of her various properties, but on examination it will be found that not one of these checks was delivered to her. McIntire's explanation, such as it is, is that he would draw a check to his sister's order, have her indorse it, then pay her the money, then indorse the check himself, and deposit it to *his own credit* in bank—a very roundabout way for a *straight* transaction, to say the least of it. A few of the checks with his indorsement being the last upon them, he claims were thus paid to Martha by the bank, but there is no other proof of this than his word, and that, we submit, is worthless. It was a very unusual method and contrary to the known course of business in the payment of checks by a bank, for it is a matter of common knowledge that when checks indorsed by more than one person are paid by banks the *last* indorser is the person to whom the payment is made, and McIntire's name is the last indorsement on *all* of these checks. His cross-examination in respect of these checks will be found on pages 678 *et seq.* of the Record, and attention is invited to it as a specimen of "an explanation which does not explain."

Mrs. Pryor up to this time had a right to regard "Emma Taylor" as a genuine person and an innocent purchaser of the property out of which McIntire had defrauded her, and if "Emma Taylor" were such Mrs. Pryor would have no

standing in court; but time at last makes its disclosures. The record shows, and it was so found by the court below (Rec., 477), that in 1887 a bill was filed in the supreme court of the District of Columbia by Henry E. McIntire against his uncle, E. A. McIntire, in which it was alleged that his said uncle, being his trustee, had defrauded him of certain real estate by having him convey the same to one "Emma Taylor," and that said "*Emma Taylor*" was a fiction. When the knowledge was brought to Mrs. Pryor's counsel of the existence of that suit and the charges of the bill as to the fictitiousness of "*Emma Taylor*," it was the first intimation that Mrs. Pryor had of the manner in which she had been defrauded of her property, for ignorant and unlettered persons, especially women of the station in life of Mrs. Pryor, although they may believe they have been defrauded, are often unable to say *how* it has been done. Being thus unable to tell her counsel, he was without facts to prove her case, and was, of course, unable to proceed; but the intimation of the fictitious character of "*Emma Taylor*" obtained from this charge of McIntire's nephew explained many things that were until then unexplainable. It was at once seen how the fraud was perpetrated, and as a consequence the bill was filed.

Have we proved the charge of the bill?

Conceding we have done so, should the relief prayed for be granted?

If we deal solely with the testimony of the *credible* witnesses in this case and with the documentary evidence, with all the inferences to be drawn from the spoliated and suspicious condition of the deeds and other papers, the conclusion is inevitable that Pryor and Jenison were both defrauded by McIntire, and that his entire dealings with the property were, to use the language of the bill, "in pursuance of a fraudulent scheme on the part of said McIntire to obtain said property for himself." As to Martha, it is equally as

conclusive that the evidence fully establishes the charge of the bill, viz :

“That the said defendant, Martha McIntire, paid no consideration for said real estate, and that the said conveyance was made to her in pursuance of the fraudulent design of the said trustee, McIntire, to cover up the fraud by him perpetrated on complainant and with the view that the benefits of the said property should inure to him as the real though not apparent owner of said property, and complainant says that whether the said Martha paid any consideration or not for the said property she had *notice*, actual or constructive, of the said fraudulent acts of the said trustee, McIntire, and she cannot in equity hold said property against your complainant.”

The only testimony in the case which can rebut the force of all the circumstantial and direct evidence going to establish the fraud is that of the three McIntires, but to receive their testimony the court must be satisfied that they are *truthful* and reliable witnesses, for if they are not truthful, or, as the law would say, credible witnesses, *their entire testimony* must be rejected. We have elsewhere dealt at length with the credibility of the McIntires as witnesses, and shown that as forgers and perjurers their equal has seldom been before a court of justice in a civil case.

With the utmost confidence, therefore, we say that the fraud charged in the bill and upon which its equity is founded is completely established—that is to say, we have proved, as there charged, that “Emma Taylor” is a fiction; that McIntire invented her, and that, cloaked in her name, his entire dealing with this property has been with the view to defraud both his *cestuis que trustent*, Pryor and Jenison, and thereby to obtain the property for himself; and, secondly, that Martha McIntire is not an innocent purchaser for value; that her confessed agent was the fraudulent trustee himself, and that even if she had paid value, yet, as the knowledge of her agent was constructively her knowledge, she cannot in equity set up a title to the property.

Now, as to the question of relief:

If the record title to this property stood at this time in Jenison, Martha McIntire being out of the case entirely, just as E. A. McIntire now is, since he disclaims all interest in the property, there would be no difficulty whatever in regard to the relief to be granted. Let us suppose that the bill had been filed by Mrs. Pryor against Jenison alone, asking that the foreclosure sale be set aside on the ground that he had been guilty of frauds in his dealings with her and in his conduct at the sale. Let us also suppose that to this bill Jenison had answered, saying, "I know nothing of these alleged frauds and I deny them; but I am quite willing that the foreclosure sale and the trustee's deed to me be set aside and that you be reinstated in your title to the property, provided you do as you offer, namely, pay me the debt which was secured upon this property and which your failure to pay when it fell due was the cause of the foreclosure." Of course, since the rights of no innocent third party have intervened, a decree setting aside the sale would be immediately made upon the coming in of such an answer, for a forfeiture is not a pleasant thing to a court of equity, and though it will be enforced when the facts and circumstances require it, yet, even in such a case, if the only parties interested in the transaction agree that the forfeiture may be waived and the sale undone the court will so decree. No one ever heard of a forfeiture being insisted upon by the court when the parties themselves agree to waive it. In other words, when the mortgagee says to the mortgagor, You may have back your property if you will pay the debt, the court will not concern itself with the question whether the mortgage was or was not rightfully foreclosed, but will aid the parties in reinstating themselves in their former position if it can be done without detriment to innocent third parties. Therefore in such a case it would be utterly unimportant, so far as Mrs. Pryor's right to relief were concerned, whether the foreclosure sale had been

properly conducted or not. The only party who could be injuriously affected by its being set aside consents in his answer to it being done. So in the case at bar, though we should concede for argument's sake that McIntire's testimony as to the conduct of the sale cannot be overcome at this lapse of time by the five witnesses who have sworn that Pryor was the purchaser and not Jenison; nay, more, though we should concede that the sale was in all respects just and fair; that the property brought its full value, and that whether it did or not it is too late for Mrs. Pryor to complain; in short, though we should concede everything that can be imagined which would entitle Jenison to demand a dismissal of the bill, yet if he does not demand it, but, on the contrary, *consents*, as he does in this case, to the sale being set aside and the relief granted which is prayed for, the court will so decree, provided no innocent purchaser for value has intervened; but Martha McIntire is here claiming to be that innocent purchaser. Let it be conceded for a moment that she is not such a purchaser, but, on the contrary, is all that we charge her with being; then she it is who has compelled Mrs. Pryor to resort to the courts, for it must be conceded that but for the deed to her Mrs. Pryor and Jenison could have settled the case out of court. We must therefore get Martha McIntire's fraudulent deed out of the way before Jenison's settlement with Pryor can be affected, and to do so we are forced to resort to a court of equity to have her deed canceled. Assuming for the moment, as we have said, that her deed is fraudulent, let us see what the situation is with her as a party defendant to this suit. The trustee, as we have seen, disclaims, as he must, all interest. The other two parties are the debtor and creditor, who are the joint victims of an unprincipled trustee, whereby one has lost her property and the other his money. They come together and wish to be reinstated in the position they were in before that trustee had by false representations, fictitious deeds, etc., juggled them out of every-

thing and placed the record title to the property in his sister's name, who never paid one dollar for it and had at least full constructive knowledge of her brother's fraud.

This debtor and this creditor (Pryor and Jenison) propose that the deed of trust shall be regarded as still existing, and that the debtor shall pay and the creditor receive the money now due upon the debt which the trust was intended to secure, but which by the trustee's fraudulent manipulations has failed up to this time to effect its purpose. This is opposed by the trustee's sister, in whom the fraudulent title stands, for, as we have said, the trustee, E. A. McIntire, necessarily disclaims all interest. The question immediately arises, Shall the court listen to her objections when the testimony clearly reveals that she has obtained the record title to the property not only without having paid for it, but through her brother's recognized agency and as the result of his rascality? With notice, actual or constructive, of all his frauds, she asks to be made the beneficiary of his acts! If, instead of nothing, she had paid three times what she says she paid for this property, even if she had paid it without actual knowledge of the fictitious character of "Emma Taylor" and of the other frauds of her brother, yet, as she admits that he was *her agent* in the entire transaction from beginning to end, his knowledge is constructively hers and would affect her as much as if she had actual knowledge; but, as we have seen, she is connected with the transaction only as a cloak for that brother. The deed under which *she* claims it is simply a cloud upon the real title. It is the obstacle which prevents Pryor and Jenison from settling their case out of court; but it is not an obstacle to the court itself. Equity does not allow its arm to be stayed on the plea that it is impotent to reach a wrong-doer. There is no fraud so circuitous that equity cannot follow it through all the convolutions of its sinuous ways, and no cunning so crafty that the chancellor may not circumvent it. When innocent parties desire to act fairly with each other and do equity

between themselves the wrong-doer has never so tangled the title that a court of equity may not unravel the meshes which his knavery has woven. Neither the faithless trustee nor those who have knowingly benefited by his acts will be suffered to keep their ill-gotten gains because of the intricacy of their dealings. That fraud can take no form which the decrees of equity cannot overcome is strikingly illustrated by a very recent decision of the Supreme Court of the United States in *Angle vs. Railway Co.* (151 U. S., 1), where Mr. Justice Brewer, delivering the opinion of the Court, uses the following apt language from Pomeroy's *Equity Jurisprudence*, section 155 :

"If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but *in any other unconscientious manner*, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in the favor of the one who is in good conscience entitled to it and who is considered in equity as the beneficial owner." And, again, in section 1053: "In general, whenever the legal title to the property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means *or under any other similar circumstances* which render it *unconscientious* for the holder of the legal title to retain and enjoy the beneficial interest, equity imposes a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have had any legal estate therein; and a court of equity has jurisdiction to reach the property *either in the hands of the original wrong-doer or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right* and takes the property relieved from the trust. The forms and varieties of these trusts, which are termed *ex maleficio* or *ex delicto*, are practically *without limit*. The principle is applied whenever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrong-doer."

But we are told that improvements have since been made upon the property. Some \$4,000 have been expended upon it. That is true, but what of it? *The Court of Appeals has allowed him his expenditures for these improvements*, so he has nothing on that score to complain of. Indeed, it would not have been error to have disallowed them, for E. A. McIntire, when he put these small houses there, *knew* that the property was neither his nor his sister's. It was not necessary for the owner to speak in such a case, for it is well settled that where one knowingly and in bad faith erects buildings or makes improvements on the property of another he cannot escape the result of his willful wrong-doing because the real owner failed to protest; but the evidence in this case is that Mrs. Pryor did protest. (See Medford's testimony, Rec., 48.) And whose money was it? Every check offered in evidence as proof of expenditures is E. A. McIntire's check. Not one dollar is shown (except upon the worthless statements of the McIntires) to have been expended by Martha McIntire; and, moreover, Martha McIntire is utterly unable to tell where she got this money to pay for these improvements. But whether it was the brother's or the sister's money that went to build these houses they are met by the axiomatic proposition that neither the thief nor the receiver of the stolen property, when the thing stolen is about to be wrested from them, shall be heard to say that if the rightful owner is allowed to reclaim the property the wrong-doer will suffer a loss of labor and money expended in improving it during the time he fraudulently possessed it. This very question of improvements by a *mala fide* purchaser has been decided in this jurisdiction.

"When circumstances of fraud exist on the part of a purchaser of real estate or his assignee with notice thereof he will not be entitled to compensation for improvements made on such fraudulently acquired property."

Beckett vs. Tyler, 3 MacArthur, 319.

All the authorities are to this effect, viz., that only *bona fide* purchasers making improvements in good faith under the supposition that the property is their own can be allowed in equity for the value of those improvements. (See Story, Eq. Ju., secs. 388, 656, 799a, and 1234 to 1239; Pom. Eq., sec. 1241.) From a note to the last-cited authority we extract the following as a concise statement of the law upon this point ;

"In all these cases, however [of improvements made on the property of another], *the element of good faith and innocent mistake is essential* ; for if a person lays out money on another's property with knowledge or notice of the true state of the title—*e. g.*, a purchaser with notice of another's title—he has no claim to be reimbursed and, of course, no lien. (Rennie *vs.* Young, 2 De G. & J., 136 ; Ramsden *vs.* Dyson, L. R. 1 H. L., 129 ; Cook *vs.* Kraft, 3 Lans., 512 ; Davidson *vs.* Barclay, 63 Pa. St., 406 ; Dart *vs.* Hercules, 57 Ill., 446 ; Cannon *vs.* Copeland, 43 Ala., 252.)"

But, as we have said, this question of improvements cannot arise in this case because the court below rightfully or wrongfully allowed the full cost of the improvements to the McIntires. They were not entitled to this allowance, in our opinion, but Mary Pryor, by reason of her poverty, has not been able to appeal from that part of the decree, and so all that she gets is her land without the improvements.

Now, what are the other grounds upon which it is claimed the bill must be dismissed and Martha McIntire allowed to keep this property ?

It is said that even conceding that both Mrs. Pryor and Jenison were cheated by the trustee, still, as Jenison has given to Martha a quitclaim deed of all his right, title, and interest in the property, she cannot now be interfered with even if "Emma Taylor" be a fiction. Let us see how much there is in this defense, which, it will be observed, is based upon a concession that "Emma Taylor" is a fiction ; and yet, in the answer to the bill it is admitted that this quit-

claim "was executed to cover and cure a defect in the deed from Jenison to [the fictitious] Taylor." The quitclaim, then, depends upon the existence of a deed to an alleged third party, but there is *no deed* when the alleged third party is a fiction. If it be true, as it undoubtedly is, that Emma Taylor is a fiction, then McIntire, acting as agent for his sister, well knew that as against everybody but Mary Pryor the legal and equitable title was in Jenison, and he (McIntire) was guilty of misrepresentation and fraud when he led Jenison to believe that he had parted with his title to a genuine person, and that he (Jenison) had no rights whatever in the property. Under such misrepresentations of fact Jenison made a quitclaim to property worth at least \$2,000 and without an incumbrance upon it. A conveyance of property of that value for \$100 under such circumstances is, of course, fraudulent and void, and Martha McIntire's title is no better by reason of such a deed than it would be without it. But there is more than this about it. It is conceded by the McIntires that Jenison executed this deed merely *as a quitclaim deed*; that it was intended to be such and no other. The words of the deed are "quitclaim," &c. So that a court of equity is bound to treat it as such. Now, a quitclaim deed, it is well settled, *passes* no title. If the party to whom the quitclaim is given has no title the fact that he has a quitclaim from another gives him none. Martha McIntire had no title whatever to the Pryor property at the time Jenison quitclaimed to her. Her title was traced from a fictitious grantor, and therefore a nullity. Consequently the quitclaim could have no operation upon it, and she stands under it without a particle of title to any of the properties in these cases. Under such circumstances we could have brought our action of ejectment against her and prevailed. But we come into equity because of the trust and because of our right to have a number of fraudulent deeds in respect of the property canceled and our title cleared of them.

Again, the one hundred dollars paid Jenison was, as we have seen, *Jenison's own money*, money which in the shape of rents had been collected by McIntire. If that be so, then the deed was a nullity for want of a consideration; for McIntire, when he paid Jenison the one hundred dollars, was only paying him what already belonged to Jenison.

Helmore *vs.* Smith, 35 Chan. Div., 436.

LACHES.

One more defense—*laches*, is set up in the brief, but not in the *pleadings*, a defense which is the common refuge of a recreant trustee when after a lapse of time his fraud has been discovered. Before dealing with the law of this defense, let us see what the *facts* are.

The record shows that the first time Martha McIntire let it be known to the world that she was claiming this property was when she recorded her deed, dated May 31, 1884, from "Emma Taylor," viz., nearly two years and a half after its date, October 14, 1886. Up to that date, as we did not and could not know that she was claiming to own the property, it certainly cannot be said we are chargeable with laches in not filing a bill against her, and she is the only defendant claiming any interest in the property.

"The making of a fraudulent deed and the *keeping of it off the record* by all the persons concerned in and cognizant of the transaction, combined with their purposed silence upon the subject, it certainly will not do to say is not a concealment for which relief may be granted" (*McAlpine vs. Hedges*, 21 Fed. Rep., 690).

But even then we had no reason to suspect "Emma Taylor" to be a fiction, and if we will consider a moment it will be seen that Mrs. Pryor was never in a position to file her bill against McIntire until she discovered or her counsel discovered for her that "Emma Taylor" was a fiction. As long as it was thought that "Emma Taylor" was a person

in esse and a *bona fide* purchaser from Jenison, no case that Mrs. Pryor could have put before counsel would have justified the filing of a bill for relief with any hope of success. Any equity that she might have had as against Jenison was rightly supposed to be cut off by his conveyance to "Emma Taylor," the supposed *bona fide* purchaser. What was there in any of the circumstances of the case to lead her to suspect the mythical character of this alleged grantee, even if we concede that a *cestui que trust* is bound to suspect her trustee?

Now, as we have seen, the first intimation which Mary Pryor had that "Emma Taylor" was a fiction was when Wm. E. McIntire in 1887 filed his bill in the equity court of the District of Columbia alleging that he had been defrauded out of his property by E. A. McIntire, and that the alleged person, "Emma Taylor," to whom he had conveyed the property at McIntire's instance, was a fiction. It was this allegation, made in a bill in equity filed in this District, which, when learned of by Mrs. Pryor's counsel, first suggested the fictitiousness of "Emma Taylor." The moment that was discovered, then, the *nature* of the fraud practiced upon Mrs. Pryor began to dawn upon her counsel. Investigation followed, and soon after, in 1890, a little over three years after the filing of the Wm. E. McIntire bill and a much shorter time after the knowledge of its averments came to Mrs. Pryor, her bill was filed. She has then been guilty of no laches. No court has said that two or three years after the discovery of a fraud of this sort is too long a time for the plaintiff to suffer to elapse before filing her bill.

But even if Mrs. Pryor learned of the fraud shortly after the original foreclosure sale, which was in 1881, she was in ample time in filing her bill. This is a case not of *construction*, but of ACTUAL fraud; and, furthermore, not of actual fraud committed by a party with whom the complainants were dealing at arm's-length, but of actual fraud committed

against us by our agent and trustee, one in whom we had a right to confide and did confide, nor are they cases of unconscionable bargains and overreaching cunning, which in the commercial world are too frequently countenanced until condemned by the keen conscience of the chancellor, but they are cases involving gross moral turpitude, forgery, false personation, spoliation of documents, and perjury.

In all such cases this court has laid down the rule (and it was followed by the Court of Appeals) as follows:

"In cases of ACTUAL fraud in connection with REAL ESTATE, the rights of bona fide purchasers for value not intervening, courts of equity never refuse relief on the ground of delay if the delay after the discovery of the fraud is not longer than the period fixed by the statute of limitations, viz., twenty years."

This is the doctrine of this court, as we shall show in a moment. Undoubtedly there are cases where relief has been refused when the delay was less than the period fixed by the statute, but it will invariably be found on examining those cases that they are not in conflict with the foregoing formula—that is to say, they are either cases in which the question of fraud was not involved or cases of *constructive* fraud only.

One of the first of the leading cases upon this subject is that of *Michoud vs. Giro*t, 4 How., 503, a case of actual fraud committed by trustees of real estate against their *cestui que trusts*. The bill was filed *thirty-six* years after the commission of the fraud. The estate of the complainants was equitable and their remedy only in equity. Mr. Justice Story, one of the greatest of American jurists, delivered an elaborate and well-considered opinion for the court, from which we quote (Rec., 560):

"In a case of actual fraud courts of equity give relief after a long lapse of time, much longer than has passed since the executors in this instance purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed, and where fraud is imputed and

proved length of time ought not to exclude relief (Prevost *vs.* Gratz, 6 Wheat., 481). Generally speaking, where a party has been guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he will be barred in equity from a wise consideration of the paramount importance of quieting men's title and upon the principle that *expedit reipublicæ ut sit finis litium*. Although the statutes of limitations do not apply to any equitable demand, courts of equity adopt them, or at least generally take the same limitations for their guide in cases analogous to those in which statutes apply at law (10 Ves., 467; 1 Cox, 149). Still, within what time a constructive trust will be barred must depend upon the circumstances of the case (Boone *vs.* Chiles, 10 Pet., 177). There is no rule in equity which excludes the consideration of circumstances, and *in a case of ACTUAL fraud we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it.*"

In White & Tudor's Leading Cases (vol. 1, part 2, p. 259) the same doctrine is laid down. The author, besides citing and quoting the foregoing from Michoud *vs.* Girot to sustain the text, says further :

"In the later case of Bowen *vs.* Evans, House of Lords cases, 257-282, the Lord Chancellor (Cottenham) stated the principle as follows in regard to the setting aside of *remote* transactions on the ground of fraud : 'When much time has elapsed since the transaction complained of, there having been parties who were competent to have complained, the court will not, upon *doubtful* or analogous evidence, assume a case of fraud, although upon fraud *clearly established*, NO LAPSE OF TIME will protect the parties to it or those who claim through them against the jurisdiction of equity, depriving them of the effects of their plunder.'

In Baker *vs.* Whiting, 3 Sumner, 476, Judge Story reiterates this rule. In that case one Tidd, being the owner of certain *lands*, employed the defendant Whiting as his agent to take care of the same, pay all taxes, &c. Whiting allowed

the land to be sold for taxes in 1821 and bought it himself, keeping the plaintiff uninformed of the facts. The bill was filed in 1837 by the heirs of Tidd, who died shortly after his employment of Whiting. The defence, besides denying the fraud, was laches. The court found the facts as charged in the bill, and on the question of laches said

"Then it is said that the plaintiffs are barred from any right in equity by the mere lapse of time. It does not appear what were the respective ages of the heirs of Tidd at the time of the tax sale nor what was the age of Stimpson; and all of them were at that time (as it should seem) citizens of another State, and of course came within the common exception of the statute of limitations. But, what is *more particularly applicable* to the present case, *twenty years* had not elapsed before the filing of the bill, and I apprehend that in the case of trust of *lands* nothing short of the statute period which would bar a legal estate of right of entry would be permitted to operate in equity as a bar of the equitable estate. This doctrine seems to be admitted by the authorities ever since the great case of *Cholmondeley vs. Clinton* (2 Jac. & Walk., R. I.), and it has been repeatedly acted upon in the Supreme Court of the United States. Indeed, in the case of *Prevost vs. Gratz*, 6 Wheat. R., 481, it was broadly laid down that in equity length of time is no bar to a trust clearly established, and that in cases where fraud is *imputed and proved* length of time ought not, *upon principles of eternal justice*, to be admitted to repel relief."

Wagner vs. Baird, 7 How., 234, was a case of actual fraud committed in obtaining the title to lands in 1796 by one O'Bannon. He lived until 1812. In 1800 the defendants made purchases from him in good faith for full value, the land being then worth about one dollar an acre. They improved the land greatly and at time of suit it was worth about \$30 an acre, as appeared from the undisputed statements of counsel in the case. The bill in equity was filed in 1840, forty-six years after the fraud committed and twenty-eight years after the death of O'Bannon and twenty-nine years after the defendants or those under whom they

claimed had purchased the property in good faith for value. All the parties to the original transactions were dead and innocent purchasers for value had intervened. This was a strong case for the presentation of the defense of laches, and the court so found, for it in nowise conflicted with the doctrine of *Michoud vs. Girod*. The language of the court in *Wagner vs. Baird*, upon the inequity of enforcing stale claims against innocent purchasers, has been the key-note upon which the changes have been rung in subsequent cases when the defense of laches has prevailed, yet it is important to observe that the court in that case upheld the doctrine of the cases which, as we have shown, declare that "the delay which can be set up in equity to bar relief must be for such period as would if the party were suing in ejectment bar his remedy." The following is the language of Mr. Justice Grier, speaking for the court in that case:

"In cases of concurrent jurisdiction courts of equity consider themselves bound by the statutes of limitations which govern courts of law in like cases, and this rather in obedience to the statute than by analogy. In many other cases they act upon the analogy of the limitations at law, as where a legal title would in ejectment be barred by *twenty years'* adverse possession, courts of equity will *act upon the like limitation* and apply it to all cases of relief sought upon equitable titles or claims touching real estate."

Thus we see that what was the law while Judge Story was upon the bench of this court was the law after he left it, and we shall see that it has been the law ever since. No varying from the rule can be found in any of the subsequent decisions of this court. Thus in *Allore vs. Jewell*, 94 U. S., 506, a deed of *lands* had been obtained from a woman by undue influence. Six years and nine months afterwards her heir brought suit to set it aside. The court granted the relief, saying "there is no *statutory bar* in the case." So in *Insurance Company vs. Eldridge*, 102 U. S., 545, where a trustee, at the instance of the com-

pany's agent, had released certain *real estate* from the lien of a trust deed which was prior in date to that of the defendant company. Laches and delay were pleaded, but the court said that it could not be set up as a defense "that the claim to have the instrument canceled by which the priority was secured was a *stale* one" when it was asserted *within the period allowed by law*, and no rights of third parties as *bona fide* purchasers have intervened to render inequitable the assertion of his original lien.

So, too, in *Kilbourn vs. Sunderland*, 130 U. S., 505, a case of actual fraud, the court says "the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the inflicting it is completed cannot generally and in the absence of other circumstances take away a right of action unless such acquiescence continues *for the period limited by the statute for the enforcement of such a right*."

And, again, in *Hammond vs. Hopkins*, 143 U. S., 24, though cited and much relied upon by Mr. Justice Hagner in his opinion, is a strong case to support the doctrine laid down in *Michoud vs. Girot*, heretofore cited, where Mr. Justice Story, speaking for the court, said that in no case of *actual* fraud could laches be set up as a defense *during the lifetime of the party charged with the fraud*; for in *Hammond vs. Hopkins* the court held—we quote from the syllabus which correctly states the decision:

"In all cases where *ACTUAL FRAUD is not made out*, but the imputation rests upon conjecture, when the seal of *death* has closed the lips of those whose character is involved and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

Thus expressly excluding cases where *actual* fraud is made out. It is to be observed also that death has not closed the lips of our trustee. If his character is involved he is here and vigorously defending it.

So in *Speidel vs. Henrici*, 120 U. S., 377-386, a case of con-

structive fraud, the Supreme Court, Mr. Justice Gray speaking for the court, quotes with approval the language of Chief Justice Marshall in *Elmendorf vs. Taylor*, 10 Wheat., 152, in which last-named case fraud, meaning *actual* fraud, was expressly excluded from the doctrine that lapse of time would bar relief.

"In such a case," Mr. Justice Gray said, "Chief Justice Marshall repeated and approved the statement of Sir Thomas Plummer, M. R., in a most important case, in which his decision was affirmed by the House of Lords, that 'both on principle and authority the laches and non-claim of the rightful owner of an equitable estate for a period of twenty years (supposing it the case of one who must within that period have made his claim in a court of law, had it been a legal estate) under no disability AND WHERE THERE HAS BEEN NO FRAUD [fraud being thus expressly excepted from the rule] will constitute a bar to equitable relief *by analogy to the statute of limitations.*'"

If this language means anything it means that in a case of fraud—actual fraud—even a non-claim for a period exceeding *twenty* years will not bar relief.

We confidently assert that the reports of the Supreme Court of the United States will be searched in vain for any doctrine in conflict with that laid down by these authorities. The numerous cases cited by the court in its opinion, so far from being at variance, are all in perfect harmony with this well-settled rule that where *actual* fraud is proved, and more especially where *real estate* is involved, no period of delay less than that provided by analogy to the statute will bar relief.

In *Wherman vs. Conklin*, a very recent case (October term, 1894), Mr. Justice Brown, speaking for the court, said:

"If the plaintiff at law has brought his action within the period fixed by the statute of limitations no court can deprive him of his right to proceed. If the statute limits him

to twenty years and he brings his action after the lapse of nineteen years and eleven months he is as much entitled as matter of law to maintain it as though he had brought it the day after his cause of action accrued," says:

"There is a class of cases which hold that where there is *actual* fraud no remedy at law is complete and adequate except that which removes the fraudulent title. As early as 1750 it was held by Lord Chancellor Hardwick, in *Bennett vs. Musgrove*, 2 Ves. Sr., 51, that a bill would lie by an execution creditor to set aside a fraudulent conveyance whether he could recover at law or not. Objection having been made to the bill upon the ground that the remedy at law was complete, the lord chancellor observed: 'But be it as it may, whether he could recover or not, he is entitled to come into this court, the *distinction* in this court being where a subsequent purchaser for valuable consideration would recover the estate and set aside or get the better of a precedent voluntary conveyance if that conveyance was fairly made without actual fraud, the court will say: Take your remedy at law; but wherever the conveyance is attended with actual fraud, though they might go to law by ejectment and recover the possession, they may come into this court and set aside that conveyance, which is a distinction between *actual* and presumed fraud from its being merely a conveyance.'"

And then Mr. Justice Brown, speaking for the court, says that while there may be a doubt whether this doctrine is in force in this country in *personal* actions the law is well settled as to *real* property.

Now, will it be said, after reading these authorities, that where a plaintiff, having the right to bring his action at law any time within twenty years, comes into equity because he can get more complete relief as to the fraud, he is to be told that equity is more favorable to fraud than a court of law and will bar him of the relief that a court of law would have given him? There can be but one answer to such a question.

There is still another principle upon which cases of actual fraud are held not to come within the rule that delay may

bar relief, and that is the principle of *estoppel*. A man who has committed only a constructive fraud has no moral turpitude upon his conscience. He may well have obtained the property in the most innocent manner. As in *Hopkins vs. Hammond*, he may have been a trustee acting in good faith and believing he had a right to do what he did do, purchasing and paying fair value for the property of his *cestui que trust*, the latter accepting the money without complaint and then, after allowing his trustee to rest for years in the quiet and honest belief that he has acquired a fair title to what he believes his own, suddenly and rudely awakes him with a charge of *constructive fraud*. Such a case is quite a different one from that of the trustee who obtains the property of his *cestui que trust* by *actual fraud*. Every moment that he holds the property he knows he is holding stolen property. He is not *mised* by delay into the belief that he has an honest title. Every night that he rests his head upon his pillow he has good cause to believe that the next morning he will be awakened with a charge of actual fraud and an exposure of his moral turpitude. He *knows* that the property fraudulently held by him is the property of his *cestui que trust*. Such a man, when his fraud is discovered and he is brought to a reckoning, is *estopped* in a court of equity to say, "You allowed me to keep the stolen property too long;" and this rule applies as well to his *mala fide* grantee as himself, and *Martha McIntire* fills that description in every particular.

This is the doctrine of this court in its most recent utterances.

Thus in *Allore vs. Jewell*, 94 U. S., 506, where the defendant had obtained the property by actual fraud and had set up as a defense the *delay* of complainant to bring suit, the court said:

"It does not lie in his mouth after having in the manner stated obtained the property of the deceased to complain that her heir did not sooner bring suit against him to compel its surrender. There is no *statutory bar* in the case."

And, again, in *Insurance Co. vs. Eldridge*, 102 U. S., 545, heretofore cited, the defendant insurance company, as we have seen, obtained through the known act of its agent a fraudulent release of a prior lien. The court held that since the company *knew* of the existence of the complainant's equity "*it does not lie in its mouth to object that the complainant did not-sooner seek to set aside the priority of the lien thus gained.*" So in *Kilbourn vs. Sunderland*, 130 U. S., 505, a case of actual fraud, where delay was set up as a defense, the court say:

"The defendants *cannot be allowed* to say that complainants ought to have suspected them and are chargeable by what they might have found out upon inquiry aroused by such suspicion."

Again, in all cases where laches is set up as a defense, the question to be determined by the court is, "Where does the *balance* of justice lie after 'weighing' the equities (as it is called) of each side or, as the court say in *Boone vs. Chiles*, 'contrasting' them?" Would it be more inequitable to refuse relief than to grant it? Has the guilty defendant more equity on his side because of the fact that he has rested for a long time in the belief that he would not be disturbed than the plaintiff has, although the latter may have delayed an unreasonable time to ask for relief? These questions, as we all know, depend upon the nature and circumstances of each case; and the cases in which such questions are asked it need not be said are not cases of *actual, gross, and outrageous fraud*, filled to the brim and running over with moral turpitude, forgery, and perjury, but they are cases of *constructive fraud*, where the trustee, honest in his intentions, has committed some breach of trust, and with a conscience void of guile has improved or otherwise changed the status of the property, or himself, in the belief that the property is honestly his own, or cases where the evidence is vague or, at least, so *doubtful* as to leave room

for the just presumption that had the charge been brought earlier it could have been disproved.

The question we repeat is, What *wrong* will the defendant suffer if the plaintiff is granted relief, conceding that the complaint is made after long delay? "If a party has a clear right in equity and it appears that no unconscionable result will follow relief, mere delay in bringing his action will not cause a court of equity to refuse it" (*Spurloch vs. Sproule*, 72 Mo., 503); and says this court in *Neblett vs. McFarland*, 92 U. S., 100-105, "Parties engaged in a *fraudulent* attempt to obtain a neighbor's property are not the objects of the special solicitude of the courts." What *unconscionable* result will follow the taking away of property from a trustee and his *mala fide* grantee who never paid a cent for it? People who have robbed the poor widow and sought to cover their crime with forgery and perjury? The unconscionable result is in permitting them to keep it, not in forcing them to yield up what was never theirs and what they *knew* all along was never theirs. This was the opinion of this court in *Insurance Co. vs. Eldridge*, 102 U. S., 540, where it was held that *when the defendant has knowledge of the equities of the complainant* he cannot plead laches as a bar to the suit.

In *Brooks vs. Martin*, 2 Wall., 70, the parties were both men of intelligence; one was trustee and the other *cestui que trust* (partnership). The delay was over *nine* years, but the fraud was clearly proved. The controversy was over personalty, where a less period than in cases of real estate will bar relief, and yet relief was granted.

In *Kilbourn vs. Sunderland*, 130 U. S., 505, another case of trusteeship and personalty, the delay was *nine* years, but the fraud being proved the court granted the relief.

It is consoling to the victims of fraud to read the language of this court when the charge has been proved and the wrong-doer laid bare in all his iniquity. We would like if time permitted, to furnish your honors with a few such instances, but we shall have to be content with a brief ex-

tract from the case of Boone *vs.* Chiles, 10 Peters, 177. In that case the defendant by a systematic course of fraud, the details of which would require too much space to recite, but the moral turpitude of which was far less than in the cases at bar, obtained the legal title to certain lands in Kentucky to which the heirs of Boone were entitled. Laches and staleness of the claim were set up as a defense to a bill in equity brought by the heirs. The court, after a careful and minute review of the facts, said :

"Such is the case between the parties as presented by the pleadings, exhibits, and evidence. A court of equity must be regardless of all its rules before it can recognize Chiles [in the case at bar McIntire] as a purchaser or as having any right whatever in the land. *It must also forfeit its character if it sanctions such a course of iniquitous fraud.* We deem it wholly useless to contrast the relative equities of the plaintiffs and Chiles in order to affirm their right to a decree for the conveyance of the legal title, *obtained in violation of every principle which governs courts of equity*, unless he has made out some objection to the relief prayed on grounds unconnected with the justice of the case. * * * The lapse of time and the staleness of the plaintiffs' equity is also set up as a bar to a decree in their favor, but whatever effect time may have in equity in favor of a possession long and peaceably held, it can have none in favor of Chiles, whose only claim is under the equity of Thomas Boone and against whom the present suit was brought in six years after he first interfered with it. It cannot be permitted to him to acquire the legal title of Hoy in virtue of Boone's equity and to hold it to his own use on the ground that Boone's right had become extinct by the lapse of time before he acquired it. The means by which the legal title has been conveyed to Chiles *have affected his conscience too deeply with fraud to suffer him to enjoy its fruits.*"

THE OPINION OF MR. JUSTICE HAGNER.

The cases cited by Mr. Justice Hagner in his opinion have been carefully examined *seriatim* by us, and we are in duty bound to say, albeit with the profoundest respect, that they have, *none of them*, any application to the *facts* of the cases at bar. The result of our examination of each of the cases cited has been that if in any one of them *actual* fraud was charged and *proved*, as in the cases at bar, the bill was not dismissed on the ground of *laches*. In most of them there was failure to prove the allegations of the bill. In others the bills were either defective for want of parties or the cases did not involve actual fraud; some of them not even constructive fraud; in others the claims were the stalest of stale claims or bold attempts to make a party pay twice for the same property or cases against *bona fide* purchasers, etc. The excellent *rhetoric* of the learned judges on the subject of *laches*, however it may commend itself to us in the abstract, was plainly, in most of the cases, *obiter*, for most of the bills might well have been dismissed for failure of proof or upon other grounds; but as we have seen there *are* cases in the Supreme Court reports having a direct application to the case at bar. Many of these we have already cited, but here is one which we have not yet noticed, although it is almost the counterpart of the case at bar in its facts and law.

In *Meador vs. Norton*, 11 Wall., 442, there were three sisters who were the owners of land in California under a Spanish grant approved in 1840. One José Bolcoff was the attorney of the sisters [as McIntire was in these cases] and represented them in obtaining the grant. It was charged in a bill filed about 1865 (twenty-five years afterwards) by the grantees of the sisters against the grantees of Bolcoff that Bolcoff, shortly after the grant to his clients, by *erasures* of names in papers, the suppression of others, and the *forging* of others [all of which we have abundantly shown McIntire

to have done], had acquired an apparent title to the land or a portion of it. The court below held, as stated in the report of the case by the Supreme Court reporter, "that the documents upon which the claim of Bolcoff was founded were *all false and were fabricated by Bolcoff, or some one at his instigation* [as must be found of McIntire in this case], to defraud the sisters of their property and secure the title to himself;" that by the false and fabricated documents and the suppression or destruction of the grant to the sisters a confirmation of the claim under the alleged grant to Bolcoff was obtained and the legal title secured to his children, when, in truth, the real title was in the three sisters and should have been adjudged to them; and it held that under these circumstances the patentees *and all persons holding under them with notice* of the claim of the sisters should be decreed to surrender the title. [McIntire is alive and in court—not dead, as Bolcoff was.]

The defenses in this court were, among others:

1st. That the claim was stale and barred by limitations.

2d. That the defendants were *bona fide* purchasers of some portions of the property for a valuable consideration without notice of the claim of the sisters, and for the other portions had conveyances or releases from them.

This court held that the charges of fraud in the bill were fully proved; that, as to Bolcoff's title, "all or nearly all of the title papers introduced to support that title were forged and fraudulent, showing to the entire satisfaction of the court that the equity of the case was in the three sisters," and that the defense of laches could not prevail *when the relief sought is grounded on a charge of secret fraud*, and it appears that the suit was commenced within a reasonable time after the evidence of the fraud was discovered.

A stronger case or one more applicable as to the law and the facts could hardly be presented, but here is another:

Hallet *vs.* Collins, 10 How., 174-186, was a bill filed about in 1845 (the decree below was entered in 1847) to set aside a deed obtained by fraud in 1830. The court described the manner of the fraud thus:

"He persuades them to release their title to William Kitchen for the sum of one thousand dollars, a sum which to young men just out of their apprenticeship, poor and ignorant of their rights, would appear large and attractive. Kennedy is well acquainted with the nature and value of their claim; they are wholly ignorant of it. He informs them that their claim is worthless, but that Kitchen is willing to give them this sum for the sake of peace and quieting his title. Besides, he had so complicated and covered up the title that it was impossible that they could comprehend it or know the value of their claim if the documents had been laid before them."

That was a fraud which sinks into insignificance beside the forged deeds and fictitious vendees of the case at bar, and yet here is what the court said of it:

"Under such circumstances *should a chancellor hesitate in setting aside the releases?*"

Norris *vs.* Hagan, 136 U. S., 386, is the only case in the Supreme Court reports which we have been able to find which even *seems* (though at first glance only) to be in some conflict with the doctrine laid down by Judge Story in Michoud *vs.* Girod, viz., that in cases of actual fraud the bill is filed in time when filed within the lifetime of the party committing the fraud.

In that case the complainant filed his bill in 1884 alleging an actual fraud committed against him by his two attorneys in 1859, *twenty-five years* previously, and that he had only discovered the frauds within a short time before commencing his suit. The case was heard on demurrer to the bill, and the court found that "there are many things about the bill which are *peculiar* and calculated to throw *suspicion* on the claim." It also found that the statement that the

complainant had only come to a knowledge of the alleged fraud within a short time of the filing of the bill was shown by the statements in the bill itself *to be false*, and that he had known of the alleged fraud for over fifteen years, and that a number of other matters alleged in the bill and amended bill were shown by other contradictory statements to be false, and thereby the whole claim was rendered suspicious; that there were "ambiguities" in the bill, etc. Taking the whole case as stated by the complainant himself, the court thought that the bill had properly been dismissed by the court below. It is easy to see that the court doubted the truth of the complainant's ambiguous and suspicious statements and on his own showing decided against him, which it might well have done without using the delay of *twenty-five* years as a make-weight to topple the scale against him.

This concludes our presentation of what we conceive to be the law controlling this case, so far as it refers to the question of laches. It still remains our duty, however, to consider specifically, so far as they apply generally to these cases, some errors which Mr. Justice Hagner has fallen into in his opinion printed in the record. Were not Mr. Justice Hagner's opinion printed in the record, this part of our task would have been dispensed with. But our duty to our client would not be fully performed if we allowed some of the remarkable propositions of that learned judge to stand unchallenged before this court.

First. It is said (Rec., 477), among other things, that as far back as 1887, which was a little over two years before the filing of these bills, a suit, No. 10745, equity, was begun in the supreme court of the District of Columbia against E. A. McIntire by his nephew (the Wm. E. McIntire suit heretofore noted) in which it was alleged that Emma Taylor was a myth, and, while his honor does not say it in so many words, the inference from his statement is that we are chargeable with culpable negligence in not sooner obtain-

ing information which was for the first time made public by the filing of this suit in 1887. That is to say, that instead of discovering as we did, in 1889, the existence of this suit and the charges therein contained, we should have discovered it *immediately*, or at least in less time than two years and a half. In the first place, a suit brought two years and a half after the obtaining of information leading to a discovery of the fraud can hardly be said to be such an unreasonable delay as would impute laches. But, putting that aside, we concede that the land records of deeds *affecting one's own property* are constructive notice of the contents of those deeds; but we will never concede until this court says so that a man, much less an unlettered colored washwoman, is chargeable with knowledge of the existence of a lawsuit and the allegations therein in respect of a piece of property in no way connected with her own? Such *cannot* be the law. Therefore there was no laches in Mrs. Pryor failing to know of the allegations in a suit which did not affect her or her property. Nay, even if it had concerned her property and had been a direct attack upon her title, unless *personal service* were had upon her she would not be chargeable with even constructive knowledge of its existence.

It seems, also, from the opinion of Mr. Justice Hagner that we ought to have known that Martha McIntire was claiming this property notwithstanding the fact that she did not record her deed until October, 1886, and within less than *four* years after that we brought this suit against her.

Another criticism made by Mr. Justice Hagner is that there is no charge that the amount realized from the foreclosure sale was insufficient (Rec., 475). The answer is that it was unnecessary to charge this in the bill, because no relief was sought or indeed could have been had after this lapse of time upon the ground that the property did not bring an adequate price. The proof that it was worth from \$1,800 to \$2,400 was offered as a circumstance going to show, among

other things, the falsity of McIntire's explanation that the erased name in the deed of the Pryors to Martha McIntire was David McIntire, since that explanation places David, an admitted speculator in real estate, in the attitude of refusing for \$450, or thereabouts, a piece of property worth upwards of \$2,000. It is a knowledge by the court of the real value of this property which discredits a great deal of the defendant's testimony and gives to that of the plaintiffs a much greater force, and for that reason only the testimony was offered. Furthermore, how could we charge that the property was not struck off for enough when we allege *that we bought the property ourselves!*—i. e., that it was struck off to Mrs. Pryor's husband under an arrangement with McIntire?

Next his honor says (Rec., 465) that Pryor and wife stood by and saw the property improved by Martha McIntire without objection. The court in this observation plainly overlooked the testimony of the builder, Medford (Rec., 48), and of Mrs. Pryor herself (Rec., 23), both of whom testify without contradiction that she protested to the builder; but it was not necessary for her to protest if Martha McIntire knew, as we have shown she did, through her brother, her admitted agent, that her title was fraudulent.

Again, his honor says "the *due execution* [by Jenison] of his deed to E. A. McIntire, recorded in July, 1881, and of that to Emma Taylor, recorded in April, 1882, * * * is not disputed" (Rec., 476). We respectfully submit that all through the case the evidence shows that we contested, as strongly as we knew how, the claim that these deeds were "duly executed." How could a deed to secure a fictitious person, and another deed ~~in~~ which that fiction is named as grantee, be "duly executed"? They were nullities. To say that we did not dispute them is to say that we abandoned our case. In like manner, on the same page (Rec., 476), his honor goes on to say: "It is not *denied* that in May, 1881, before the [foreclosure] sale Pryor and wife had under-

taken to convey the property to Martha McIntire in consideration of \$5.00 and the assumption by her of the liens on the property by deed duly executed and acknowledged, which Martha refused to accept." Surely the learned judge had entirely forgotten the evidence and the contention of plaintiff's counsel as to this deed when he says "the execution of this deed is not denied." Her counsel tried to make that denial, both in the testimony and in their argument, as emphatic as it was possible to make it. Not only did Mrs. Pryor positively deny that she executed such a deed, but a great deal of time was devoted to it by the testimony of the experts McLellan (Rec., 93) and Hay (Rec., 783). We proved it to be a spoliated paper. Our cross-examination of the McIntires showed also how much we disputed the genuineness of the paper. Indeed, if there was one claim which we combatted more than we did the claim that this deed was genuine we are not aware of it.

The remarkable failure of his honor to recollect the facts of the case before him is again illustrated in a still more curious misstatement of fact (Rec., 497). His honor is endeavoring to show what he conceives to be the improbability of the plaintiff's contention that the property was knocked down at the foreclosure sale to Thomas Pryor, a matter which, as we have shown, is "a mere pin among the crowbars" of this case, for it is utterly immaterial whether the property was knocked down to him or to Jenison. But the learned judge proceeds to pick up this pin and dispose of the plaintiff's contention by reviewing the evidence in this way:

"Among the witnesses who remember that so many years ago they heard the proclamation of a purchaser who had not a cent in the world to pay for what he bought *are some negro girls* who were children of 7 or 9 years of age at the time of the sale. The common experience of individuals is to be applied in judging of the value of such statements, and to me it seems most improbable, supposing any *negro girls* of such ages had been present at a sale of land within

the last month, that one in a dozen of them could be found today to tell what the same was about or to give a reliable account of anything that did occur."

Now, when we refer to the record we find that there were just five witnesses as to the property being struck off to Pryor; four of them, Ragan, Holliday, Johnson, and Jacobs, the record shows to have been *grown men*, and the other witness was Mrs. Pryor herself. So far, therefore, from "some negro girls" testifying upon that subject, no negro girls were witnesses in the case at all! They are as fictitious as "Emma Taylor" herself. There are quite a number of other instances of similar errors of fact into which the learned judge stumbled which appear in the other cases.

Again, the learned judge conceived (Rec., 496) the plaintiff's contention to be that McIntire was really serious in his proposition to Pryor that he should bid in the property and pay for it in notes or in instalments, and says, "McIntire was under no necessity to make so stupid an arrangement." We have already said that counsel did not contend in the court below, nor do they contend here, that McIntire for one moment intended to carry out "so stupid an arrangement." We must recollect, however, that he was dealing with an unlettered colored man—a wood-sawyer, whitewasher, and doer of odd jobs; a man who was so stupid as to permit a foreclosure sale of property worth at least \$2,000 for a debt of \$450 when he could easily have borrowed three times that much upon it and paid off the debt. Such a man was a mere puppet in McIntire's hands. It was no trouble to him to satisfy Pryor's mind that no harm would come to him by such a sale, and so Pryor, who, he says, regarded him as a friend in need, believed him in earnest when he suggested this "stupid arrangement." The poor wood-sawyer did not think it stupid; he had not the capacity to judge either of its legality or feasibility; it was sufficient for him to know that "Mr.

McIntire" was going to befriend him as much as lay in his power and save his wife's property, and so the lamb was led to the slaughter. This was what we contended and still contend. It was easy enough, as we have shown, for McIntire to have it understood that old man Pryor was "bidding in" the property, and so keep off other bidders. Easy enough to have it knocked down to him and then afterwards make a deed to Jenison, and easy enough at the same time to keep poor old Pryor in total ignorance of his duplicity.

But why dwell upon this feature of the case, since, as we have said, it is not necessary to grant the relief on the ground that the property was knocked down to Pryor. The equity of the bill grows out of the systematic and successful fraud practiced by the recreant trustee upon both Pryor and Jenison, whereby he manipulated this property to his own uses and eventually got the apparent title in himself under the cloak of his sister Martha. Our position—and, though we strove hard to impress it upon the learned judge, it seems to have been entirely lost sight of—was that the only honest defendant in the case was Jenison, the other defendants, Martha and E. A. McIntire, having shown no interest whatever in the property which the court could recognize. We said and still say that the property belonged either to Pryor or to Jenison. Pryor claims that it belongs to her. Jenison says, "No matter whether it belongs to me or to you, you may have it so far as I am concerned if you will pay the debt which was secured upon it and for which the foreclosure sale was made." In other words, he consents to the sale being set aside and to Mrs. Pryor being reinstated in her title provided she pays this debt, and this she tenders herself ready to do. To the entering of a decree to this effect we insisted, and still insist, Martha McIntire cannot successfully object unless she shows herself to be a *bona fide* purchaser for value from Jenison without notice of her brother's frauds. If the court believes her such and rejects the proof that "Emma Taylor" is a fiction, of course

we have no case; but while we bow in loyal submission to a finding of fact, however contrary it may be in our opinion to the evidence, we do respectfully protest against the position taken by us being misconceived and a decision rendered against our client on a case she is not presenting.

Another reason given by Mr. Justice Hagner for his decision in the Pryor case is, we respectfully submit, a strong point in her favor. It is said (Rec., 496) that Mrs. Pryor had sworn in her original bill that Jenison had "informed her he did not know the property had been sold under the trust or conveyed to him or that it stood in his name, and that he had received no consideration whatever for the execution of the deed to Emma Taylor." For swearing that she had thus been informed the court, referring to the accusations of perjury made by complainant's counsel against the McIntires, intimates that "the tables might have been turned" against Mrs. Pryor, for, said his honor, "it cannot be contended that this statement is true." This is a serious charge. Let us see if it be well founded. It will be observed that Mrs. Pryor's statement is that she was *informed* by Jenison of certain facts. If she was not so informed by Jenison, then she has sworn falsely; otherwise the intimation that she has perjured herself falls to the ground. Referring to Jenison's testimony (Rec., 36), it will be seen that he says he had been called upon for information by Mrs. Pryor's counsel *before* the filing of the bill. He also says that *after* the bill was filed McIntire called upon him and told him (Rec., 40) "that the statements embraced in the bill were quite at variance with some of the facts;" that thereupon he went to McIntire's office and was shown by him the signed order authorizing the sale; whereupon, on seeing this paper with his name signed to it, he was convinced that he had directed the sale to be made, but he distinctly says (Rec., 45) that until it was shown him "I should not have supposed that I *executed* the paper" (Rec., 45)—i. e., that he had directed a foreclosure of the trust—so that when he first

gave information about these matters to Mrs. Pryor's counsel he, of course, was of the *belief* that the foreclosure had been made *without his authority*. Then he says that after the bill was filed (which contained the statement that plaintiff had been *informed* by Jenison that the sale had been made without his authority) he had *another* interview with Mrs. Pryor's counsel, his memory having been in the meantime refreshed by the exhibition to him by McIntire of the signed order, and that in consequence of that interview he was told by plaintiff's counsel that the bill would be amended before he (Jenison) put in his answer. Now, when we refer to the amended bill we find the statement that the sale had been made without Jenison's direction *stricken out*.

As to the averment in the bill that Jenison received no consideration for the deed executed by him to Emma Taylor we respectfully submit that it is *absolutely* correct. We have shown that the \$100 was not received by Jenison as a consideration for executing the deed, and, moreover, that the money paid him was *his own* and not McIntire's.

So that, instead of the intimation of perjury against Mrs. Pryor being sustained, the very fact that she immediately amended her bill so as to correct a statement resulting from a lapse of memory in her informant should go to strengthen her credibility rather than to impugn it; but the circumstance of this amendment is a still stronger proof that *laches* cannot be charged to Mrs. Pryor. Being put upon inquiry by the knowledge obtained by her counsel of the charges made by McIntire's nephew as to the fictitiousness of "Emma Taylor," she at once through them proceeds to investigate. The evidence shows that the facts were diligently sought by her counsel from Jenison, and that Jenison, himself being misled, misinformed them, thus showing that, though she endeavored to obtain through reasonably intelligent and diligent counsel the exact facts, she was unable to do so, and yet it is said she is guilty of *laches* in not being wiser than both her counsel and Jenison!

In conclusion we submit that to allow Martha McIntire to run away with this property would be to permit a *mala fide* party to frustrate the efforts of an honest debtor and an honest creditor to do that which is fair and right between themselves, and, moreover, would be to give to this *mala fide* party a valuable piece of real estate for which she has paid absolutely nothing, for it will be seen by the auditor's report that every dollar shown by the McIntires to have been expended by them upon this property, either by way of improvements, taxes, or repairs, *has been allowed them.*

FRANKLIN H. MACKEY,

For Appellee.